

From: 61707-85443197@requests.muckrock.com
Sent: Tuesday, September 25, 2018 9:12 AM
To: FOIARequests, EOIR (EOIR)
Subject: Freedom of Information Act Request: Guidance on Telephonic Hearings

Department of Justice, Executive Office for Immigration Review
FOIA Office
Suite 1903
5107 Leesburg Pike
Falls Church, VA 20530

September 25, 2018

To Whom It May Concern:

Pursuant to the Freedom of Information Act, I hereby request the following records:

The records from January 1, 2018 to the date this request is processed reflecting the agency's guidance to IJs about whether and when to permit an attorney to appear via telephone.

The search should include any e-mail messages sent to any of the following: (1) All_of_Judges@EOIR.USDOJ.GOV; (2) the EOIR e-mail address for Immigration Judge Rebecca Holt, the EOIR e-mail address for Immigration Judge Vernon Miles; or the EOIR e-mail address for Immigration Judge Angela Munson. This should include messages where any of these four recipients is listed in the "to," "cc," or "bcc" fields.

The keywords to search for are "telephonic" or "by telephone"

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Matthew Hoppock

Filed via MuckRock.com
E-mail (Preferred): 61707-85443197@requests.muckrock.com
Upload documents directly: https://www.muckrock.com/accounts/agency_login/department-justice-executive-office-immigration-review-4122/guidance-on-telephonic-hearings-

61707/?email=EOIR.FOIARequests%40usdoj.gov&uuid-login=e25faeb8-3474-4251-8723-1e8c78bfcc68#agency-reply

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News
DEPT MR 61707
411A Highland Ave
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.



U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

5107 Leesburg Pike, Suite 1903
Falls Church, Virginia 22041

September 25, 2018

Matthew Hoppock
MuckRock News - DEPT MR 61707
411A Highland Ave.
Somerville, MA 02144

RE: Freedom of Information Act Request
Electronic Mail Messages

Dear Matthew Hoppock:

This response acknowledges receipt of your Freedom of Information Act (FOIA) request by the Executive Office for Immigration Review (EOIR). Your request has been assigned control number: 2018-51735.

If you have filed a fee waiver request, EOIR will address the fee waiver in a separate letter. Otherwise, your request constitutes an agreement to pay fees that may be chargeable up to \$25 without notice. Most requests do not require any fees; however, if the fees for processing the request are estimated to exceed \$25.00, EOIR will notify you before processing the request to determine whether you will commit to paying the fee or whether you wish to narrow the scope of your request to reduce the fee. Fees may be charged for searching records at the rate of \$4.75 (administrative)/\$10.00 (professional) per quarter hour, and for duplication of copies at the rate of \$.05 per copy. The first 100 copies and two hours of research time are not charged, and charges must exceed \$25.00 before we will charge a fee.

The FOIA requires an agency to respond within 20 working days after receipt of the request, and EOIR endeavors to meet this standard. The FOIA permits a ten-day extension of this time period, pursuant to 5 U.S.C. § 552(a)(6)(B), based on unusual circumstances. Your request involves "unusual circumstances," and EOIR is extending the time period to respond by an additional 10 working days because your request either requires the collection of records from field offices, or involves a search for numerous records that will necessitate a thorough and wide-ranging search at headquarters.

EOIR FOIA requests are placed in one of three tracks. Track one is for those requests that seek and receive expedited processing pursuant to subsection (a)(6)(E) of the FOIA. The second track is for simple requests that do not involve voluminous records or lengthy consultations with other entities. Simple requests generally receive a response in about 28 business days. Track three is for complex requests that involve voluminous records and for which lengthy or numerous consultations are required, or those requests that may involve sensitive records. Complex requests generally receive a response in six months to one year. As a matter of default, your request has been placed in the second track for simple requests. If EOIR intends to place your request in track three for complex requests or if you have requested expedited processing, EOIR will contact you in a separate letter.

If you have any questions regarding unusual circumstances, you may contact the EOIR FOIA Service Center to discuss reformulation or an alternative time frame for the processing of your request with the analyst handling your request or the FOIA Public Liaison at the telephone number 703-605-1297 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

Mai Phung
Mai Phung

From: 61720-05451195@requests.muckrock.com
Sent: Tuesday, September 25, 2018 5:28 PM
To: FOIARequests, EOIR (EOIR)
Subject: Freedom of Information Act Request: Memphis Immigration Court Telephonic Hearing Policy
Attachments: 201809252C20FOIA20request20re20IJ20Telephone.pdf

Department of Justice, Executive Office for Immigration Review
 FOIA Office
 Suite 1903
 5107 Leesburg Pike
 Falls Church, VA 20530

September 25, 2018

To Whom It May Concern:

Pursuant to the Freedom of Information Act, I hereby request the following records:

The Catholic Legal Immigration Network, Inc. (“CLINIC”) submits this Freedom of Information Act (“FOIA”) request (the “Request”) for specific records related to what appears to be a new policy or practice in place at the Memphis Immigration Court (the “Court”) whereby Immigration Judges (“IJ”) deny requests to appear telephonically in the absence of “extraordinary circumstances,” even for Master Calendar hearings at which a respondent might reasonably expect to spend less than ten minutes in front of the Court. Please see the correspondence attached to this letter for further details.

I. Background

Previously and until recently, it was the practice and or policy of the Court to grant motions to appear telephonically solely on grounds that a respondent and or counsel’s lack of geographic proximity to the Court presented good cause to do so. This practice, entirely consistent with the Immigration Court Practice Manual, see §§ 4.6, Form of the Proceedings, and 4.7, Hearings by Video or Telephone Conference, made sense from both a practical and constitutional perspective.

As you know, expecting an immigrant in proceedings “to understand the complex and intricate immigration system without the assistance of counsel is fundamentally unfair.” See, e.g., United States Commission on Civil Rights, With Liberty and Justice for All, 121 (September 2015), available at <http://bit.ly/2NDf2xw> (last accessed September 25, 2018). Thus, the efforts that the Court had undertaken to facilitate access to counsel by providing flexible access to the Court were laudable.

Unfortunately, it would appear that the Court has abruptly shifted course. Now, the Court appears to have adopted a new policy or practice whereby the same or similarly-grounded motions as those referenced above are being denied on heretofore unheard of grounds that “extraordinary circumstances” are not present such that relief would be warranted. Such a change would constitute a significant departure from the Court’s past practice—upon which many respondents and counsel have and will continue to rely in structuring their attorney-client relationships unless adequately informed otherwise.

Perhaps more so now than ever, a fair and full understanding of the policies and practices of the Court is especially important given that the Department has increased its enforcement activities, and, thereby, exposes more and more individuals to proceedings at the Court. Further, release of the requested records is critical to ensure meaningful public access to and debate about how the Government works as a general matter. These records will contribute to the American public's understanding of governmental policy and inform current and future public discussion about the legality and wisdom of the current administration's 'approach' to immigration, as well as any resulting harm to individuals' human right, our nation's values, and our national security.

II. Requested Records

CLINIC seeks the release of the records outlined below. To the extent that treating the request below as divisible (i.e., as if it were made in multiple requests) would allow you to more expeditiously respond to any or all constituent parts, please do so. With respect to the form of production, CLINIC request that responsive electronic records be provided in their native file format. Alternatively, CLINIC requests that records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

CLINIC hereby requests the following records:

- o For the past one hundred and eighty (180) days, records sent to and or from IJ Richard J. Averwater that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- o For the past one hundred and eighty (180) days, records sent to and or from IJ Rebecca L. Holt that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- o For the past one hundred and eighty (180) days, records sent to and or from IJ Vernon Benet Miles that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- o For the past one hundred and eighty (180) days, records sent to and or from J. Thomas Davis that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";

Each of the above requests should be read to include any correspondence in which any of the named individuals or their addresses (electronic or physical) appear in the "From", "To", "CC", or "BCC" address lines.

Note that CLINIC does not seek any personally identifiable information about any third party including any petitioner, applicant, and or detainee. If responsive records and or information contain personally identifiable information, please redact such information and produce such redacted records in response to this Request.

III. Application for Expedited Processing

CLINIC requests expedited processing of the above Request pursuant to applicable law and regulations. There is a "compelling need" for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity. In addition, the records and information sought relate to a "breaking news story of general public interest."

A. CLINIC is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

CLINIC is "primarily engaged in disseminating information" within the meaning of the statute and regulations. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of CLINIC's work and are among its primary activities. For example:

- o Since 1997, CLINIC's programs have helped more than 100,000 people apply for citizenship; helped approximately 12,000 refugees and asylees apply for green cards; and have provided immigrants with over 15,000 hours of English language instruction.
- o CLINIC represents more than 170 dioceses and religious communities that bring foreign-born priests, sisters, seminarians and religious laypersons to the United States each year.
- o CLINIC trained more than 7,000 immigration practitioners in 2012.
- o CLINIC's Attorney-of-the-Day Help Line fields at least 20 calls per day from member agencies on the most effective strategy for representing clients. CLINIC's attorneys staff the hotline which covers topics such as family-based immigration, naturalization, temporary employment authorization, and relief from removal.
- o CLINIC's pro bono attorneys have filed briefs and represented more than 500 immigrants before the Board of Immigration Appeals (BIA).

CLINIC plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records and information requested are not sought for commercial use and the requestors plan to disseminate the information disclosed as a result of this Request to the public at no cost.

B. The records sought are urgently needed to inform the public about actual or alleged government activity.

The records and information sought by this Request are urgently needed to inform the public about actual or alleged government activity; moreover, the records sought relate to a breaking news story of general public interest. Release of the records sought by the Request will aid the American public in drawing its own conclusions about the legitimacy and legality of our immigration system. Moreover, the records sought relate to a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence." Given the foregoing, expedited processing should be granted for this Request.

IV. Application for Waiver or Limitation of Fees

CLINIC asks that all fees associated with this Request be waived because disclosure of the requested records and information will contribute significantly to public understanding of the governmental activities identified above and because the disclosure is not in CLINIC's commercial interest.

A. Disclosure of the records and information is in the public interest.

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities related to the means by which the government detains certain immigrants. CLINIC has the capacity and intent to disseminate widely the requested information to the public. CLINIC provides technical support to the members of its network on a broad range of immigration law topics. The network includes approximately 1,200 attorneys and accredited representatives and assists some 600,000 clients, parishioners, and community members with immigration matters annually. CLINIC publishes books, produces a monthly newsletter, and provides in-person training, online courses, and webinars on a variety of immigration law issues including those affecting detained individuals. In addition, CLINIC's materials are disseminated to the public through its website, www.cliniclegal.org, which for the past couple of months has received approximately 100,000 unique views per month.

Information obtained through this FOIA request will contribute to CLINIC's public education materials on the immigration system and will assist CLINIC in providing technical assistance to nonprofit legal services providers and pro bono attorneys who represent individuals in immigration detention. Finally, CLINIC has regular contact with national print and news media and may share information gleaned from this Request with interested parties.

B. Disclosure of the information is not in CLINIC's commercial interest.

CLINIC is a not-for-profit organization. CLINIC seeks the requested information and records for the purpose of educating the public and not for the purpose of commercial gain. CLINIC will also use the information obtained to inform our organization's technical assistance and training programs, which provide free consultation and resources to immigrants and their attorneys across the United States.

Thank you for your prompt attention to this request. Please reply to this request within the timeframe provided by law. If portions of the requested records and or information are claimed to be exempt from disclosure under FOIA, please indicate the specific reasons for the alleged exemptions, the number of pages withheld, and the dates of the records withheld, producing the remaining non-exempt portions.

Please do not hesitate to contact us should you have any questions or concerns.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Michael Edelman

Filed via MuckRock.com

E-mail (Preferred): 61720-05451195@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/department-justice-executive-office-immigration-review-4122/memphis-immigration-court-telephonic-hearing-policy-61720/?email=EOIR.FOIARequests%40usdoj.gov&uuid-login=7d08e341-3c17-4858-acaf-bb9044baabe4#agency-reply

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News
DEPT MR 61720
411A Highland Ave
Somerville, MA 02144-2516

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NATIONAL OFFICE

8757 Georgia Avenue • Suite 850 • Silver Spring, MD 20910 • Tel: 301.565.4800 • Fax: 301.565.4824 • Website: www.cliniclegal.org

September 25, 2018

U.S. Department of Justice
Executive Office for Immigration Review
Office of General Counsel – FOIA Service Center
5107 Leesburg Pike, Suite 1903
Falls Church, VA 22041
E-mail address: EOIR.FOIARequests@usdoj.gov

Re: Request under the Freedom of Information Act for records related to Memphis Immigration Court practice or policy of prohibiting telephonic and or video appearances In the absence of "extraordinary circumstances"

Dear FOIA Officer:

The Catholic Legal Immigration Network, Inc. ("CLINIC") submits this Freedom of Information Act ("FOIA") request (the "Request") for specific records related to what appears to be a new policy or practice in place at the Memphis Immigration Court (the "Court") whereby Immigration Judges ("IJ") deny requests to appear telephonically in the absence of "extraordinary circumstances," even for Master Calendar hearings at which a respondent might reasonably expect to spend less than ten minutes in front of the Court.

I. Background

Previously and until recently, it was the practice and or policy of the Court to grant motions to appear telephonically solely on grounds that a respondent and or counsel's lack of geographic proximity to the Court presented good cause to do so. This practice, entirely consistent with the Immigration Court Practice Manual, *see §§ 4.6, Form of the Proceedings, and 4.7, Hearings by Video or Telephone Conference*, made sense from both a practical and constitutional perspective.

As you know, expecting an immigrant in proceedings "to understand the complex and intricate immigration system without the assistance of counsel is fundamentally unfair." See, *e.g.*, United States Commission on Civil Rights, *With Liberty and Justice for All*, 121 (September 2015), available at <http://bit.ly/2NDf2xw> (last accessed September 25, 2018). Thus, the efforts that the Court had undertaken to facilitate access to counsel by providing flexible access to the Court were laudable.

Unfortunately, it would appear that the Court has abruptly shifted course. Now, the Court appears to have adopted a new policy or practice whereby the same or similarly-grounded motions as those referenced above are being denied on heretofore unheard of grounds that "extraordinary circumstances" are not present such that relief would be warranted. Such a change would constitute a significant departure from the Court's past practice—upon which many respondents and counsel have and will continue to rely in structuring their attorney-client relationships unless adequately informed otherwise.

Perhaps more so now than ever, a fair and full understanding of the policies and practices of the Court is especially important given that the Department has increased its enforcement activities, and, thereby, exposes more and more individuals to proceedings at the Court. Further, release of the requested records is critical to ensure meaningful public access to and debate about how the Government works as a general matter. These records will contribute to the American public's understanding of governmental policy and inform current and future public discussion about the legality and wisdom of the current administration's 'approach' to immigration, as well as any resulting harm to individuals' human right, our nation's values, and our national security.



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II. Requested Records

CLINIC seeks the release of the records outlined below.¹ To the extent that treating the request below as divisible (*i.e.*, as if it were made in multiple requests) would allow you to more expeditiously respond to any or all constituent parts, please do so. With respect to the form of production,² CLINIC request that responsive electronic records be provided in their native file format. Alternatively, CLINIC requests that records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

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Each of the above requests should be read to include any correspondence in which any of the named individuals or their addresses (electronic or physical) appear in the "From", "To", "CC", or "BCC" address lines.

Note that CLINIC does not seek any personally identifiable information about any third party including any petitioner, applicant, and or detainee. If responsive records and or information contain personally identifiable information, please redact such information and produce such redacted records in response to this Request.

III. Application for Expedited Processing

CLINIC requests expedited processing of the above Request pursuant to applicable law and regulations.³ There is a "compelling need" for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged

¹ The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials, and studies.

² See 5 U.S.C. § 552(a)(3)(B)

³ See 5 U.S.C. § 552(a)(6)(E) and 32 C.F.R. § 1900.34(c); 28 C.F.R. § 16.5(e); 32 C.F.R. § 286.4(d)(3); 22 C.F.R. § 171.12(b).



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government activity.⁴ In addition, the records and information sought relate to a "breaking news story of general public interest."⁵

A. CLINIC is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

CLINIC is "primarily engaged in disseminating information" within the meaning of the statute and regulations. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of CLINIC's work and are among its primary activities.⁶ For example:

- Since 1997, CLINIC's programs have helped more than 100,000 people apply for citizenship; helped approximately 12,000 refugees and asylees apply for green cards; and have provided immigrants with over 15,000 hours of English language instruction.
- CLINIC represents more than 170 dioceses and religious communities that bring foreign-born priests, sisters, seminarians and religious laypersons to the United States each year.
- CLINIC trained more than 7,000 immigration practitioners in 2012.
- CLINIC's Attorney-of-the-Day Help Line fields at least 20 calls per day from member agencies on the most effective strategy for representing clients. CLINIC's attorneys staff the hotline which covers topics such as family-based immigration, naturalization, temporary employment authorization, and relief from removal.
- CLINIC's pro bono attorneys have filed briefs and represented more than 500 immigrants before the Board of Immigration Appeals (BIA).

CLINIC plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records and information requested are not sought for commercial use and the requestors plan to disseminate the information disclosed as a result of this Request to the public at no cost.

B. The records sought are urgently needed to inform the public about actual or alleged government activity.

The records and information sought by this Request are urgently needed to inform the public about actual or alleged government activity; moreover, the records sought relate to a breaking news story of general public interest.⁷ Release of the records sought by the Request will aid the American public in drawing its own conclusions about the legitimacy and legality of our immigration system.

⁴ 5 U.S.C. § 552(a)(6)(E)(v); see also 32 C.P.R. § 1900.34(c)(2); 28 C.P.R. § 16.5(e)(I)(ii); 32 C.P.R. § 286.4(d)(3)(ii); 22 C.P.R. § 171.12(b)(2).

⁵ 22 C.F.R. § 171.12(b)(2)(i); see also 32 C.F.R. § 1900.34(c)(2) (providing for expedited processing when "the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity"); 32 C.P.R. § 286.4(d)(3)(ii)(A).

⁶ See *ACLU v. Dep't of Justice*, 321 F. Supp. 2d. 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that "gathers information of potential public interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" to be "primarily engaged in disseminating information" (cleaned up)).

⁷ See 5 U.S.C. § 552(a)(6)(E)(v); see also 32 C.P.R. § 1900.34(c)(2); 28 C.P.R. § 16.5(e)(I)(ii); 32 C.P.R. § 286.4(d)(3)(ii); 22 C.P.R. § 171.12(b)(2).



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Moreover, the records sought relate to a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence."⁸ Given the foregoing, expedited processing should be granted for this Request.

IV. Application for Waiver or Limitation of Fees

CLINIC asks that all fees associated with this Request be waived because disclosure of the requested records and information will contribute significantly to public understanding of the governmental activities identified above and because the disclosure is not in CLINIC's commercial interest.⁹

A. Disclosure of the records and information is in the public interest.

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities related to the means by which the government detains certain immigrants. CLINIC has the capacity and intent to disseminate widely the requested information to the public. CLINIC provides technical support to the members of its network on a broad range of immigration law topics. The network includes approximately 1,200 attorneys and accredited representatives and assists some 600,000 clients, parishioners, and community members with immigration matters annually. CLINIC publishes books, produces a monthly newsletter, and provides in-person training, online courses, and webinars on a variety of immigration law issues including those affecting detained individuals. In addition, CLINIC's materials are disseminated to the public through its website, www.cliniclegal.org, which for the past couple of months has received approximately 100,000 unique views per month.

Information obtained through this FOIA request will contribute to CLINIC's public education materials on the immigration system and will assist CLINIC in providing technical assistance to nonprofit legal services providers and pro bono attorneys who represent individuals in immigration detention. Finally, CLINIC has regular contact with national print and news media and may share information gleaned from this Request with interested parties.

B. Disclosure of the information is not in CLINIC's commercial interest.

CLINIC is a not-for-profit organization. CLINIC seeks the requested information and records for the purpose of educating the public and not for the purpose of commercial gain. CLINIC will also use the information obtained to inform our organization's technical assistance and training programs, which provide free consultation and resources to immigrants and their attorneys across the United States.

Thank you for your prompt attention to this request. Please reply to this request within the timeframe provided by law. If portions of the requested records and or information are claimed to be exempt

⁸ See 28 C.F.R. § 16.5(e)(1)(iv)

⁹ 5 U.S.C. § 552(a)(4)(A)(iii); see also 6 C.F.R. § 5.11(k) (records may be furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of the requester). CLINIC is a 501(c)(3) organization that promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of Catholic and community legal immigration programs. CLINIC's network originally was comprised of 17 programs. It has since increased to 300 diocesan and other affiliated immigration programs with 400 offices in 47 states, Puerto Rico, and the District of Columbia. The network employs roughly 1,200 BIA accredited representatives and attorneys who, in turn, serve hundreds of thousands of low-income immigrants each year. For additional information, see [https://cliniclegal.org](http://cliniclegal.org).



CATHOLIC LEGAL
IMMIGRATION
NETWORK, INC.

NATIONAL OFFICE

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from disclosure under FOIA, please indicate the specific reasons for the alleged exemptions, the number of pages withheld, and the dates of the records withheld, producing the remaining non-exempt portions.

Please do not hesitate to contact us should you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "M. J. Edelman".

Michael Joseph Edelman, Esq.
Federal Litigation Attorney
Catholic Legal Immigration Network, Inc. (CLINIC)
8757 Georgia Avenue, Suite 850
Silver Spring, MD 20910
P: 301-565-4800
F: 301-565-4824
medelman@cliniclegal.org
www.cliniclegal.org



U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

5107 Leesburg Pike, Suite 1903
Falls Church, Virginia 22041

September 26, 2018

Michael Edelman
MuckRock News - DEPT MR 61720
411A Highland Ave.
Somerville, MA 02144

RE: Freedom of Information Act Request
Video Teleconferencing

Dear Michael Edelman:

This response acknowledges receipt of your Freedom of Information Act (FOIA) request by the Executive Office for Immigration Review (EOIR). Your request has been assigned control number: 2018-51805.

If you have filed a fee waiver request, EOIR will address the fee waiver in a separate letter. Otherwise, your request constitutes an agreement to pay fees that may be chargeable up to \$25 without notice. Most requests do not require any fees; however, if the fees for processing the request are estimated to exceed \$25.00, EOIR will notify you before processing the request to determine whether you will commit to paying the fee or whether you wish to narrow the scope of your request to reduce the fee. Fees may be charged for searching records at the rate of \$4.75 (administrative)/\$10.00 (professional) per quarter hour, and for duplication of copies at the rate of \$.05 per copy. The first 100 copies and two hours of research time are not charged, and charges must exceed \$25.00 before we will charge a fee.

The FOIA requires an agency to respond within 20 working days after receipt of the request, and EOIR endeavors to meet this standard. The FOIA permits a ten-day extension of this time period, pursuant to 5 U.S.C. § 552(a)(6)(B), based on unusual circumstances. Your request involves "unusual circumstances," and EOIR is extending the time period to respond by an additional 10 working days because your request either requires the collection of records from field offices, or involves a search for numerous records that will necessitate a thorough and wide-ranging search at headquarters.

EOIR FOIA requests are placed in one of three tracks. Track one is for those requests that seek and receive expedited processing pursuant to subsection (a)(6)(E) of the FOIA. The second track is for simple requests that do not involve voluminous records or lengthy consultations with other entities. Simple requests generally receive a response in about 28 business days. Track three is for complex requests that involve voluminous records and for which lengthy or numerous consultations are required, or those requests that may involve sensitive records. Complex requests generally receive a response in six months to one year. As a matter of default, your request has been placed in the second track for simple requests. If EOIR intends to place your request in track three for complex requests or if you have requested expedited processing, EOIR will contact you in a separate letter.

If you have any questions regarding unusual circumstances, you may contact the EOIR FOIA Service Center to discuss reformulation or an alternative time frame for the processing of your request with the analyst handling your request or the FOIA Public Liaison at the telephone number 703-605-1297 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

Mai Phung

Mai Phung

Phung, Mai (EOIR)

From: Nathan Bogart (b) (6)
Sent: Monday, September 24, 2018 10:25 PM
To: FOIARequests, EOIR (EOIR)
Cc: MRUFOIA Requests
Subject: Freedom of Information Act Request on Motions to Permit Telephonic Appearance in Immigration Court

Dear Sir/Madam:

Pursuant to the Freedom of Information Act/Privacy Act, 5 U.S.C. § 552/552a, we request information regarding the following:

- Any internal communications between staff and immigration judges of the Memphis Immigration Court located at 80 Monroe Avenue, Suite 501, Memphis, TN 38103, made in 2018, including but not limited to, communications made electronically or otherwise in writing by immigration judges Rebecca Holt, Richard Averwater and Vernon Miles and the court administrator;
- Any internal communications between staff and immigration judges of the LaSalle Immigration Court located at 830 Pine Hill Road, Jena, LA 71432, made in 2018, including but not limited to, communications made electronically or otherwise in writing by the immigration judges and the court administrator;
- All documentation relating to the decision of immigration judges in the Memphis and LaSalle immigration courts to begin denying motions to permit telephonic appearance;
- Any communications between the immigration judges, court administrators and court staff of the Memphis and LaSalle immigration courts regarding a policy to deny motions to permit telephonic appearance and the justifications for such denials;
- Any communications between the immigration judges, court administrators and court staff of the Memphis and LaSalle immigration courts regarding the meaning of the term "extraordinary circumstances" as it relates to motions to permit telephonic appearances, specifically any requirement that counsel for respondent demonstrate "extraordinary circumstances" in order to have a motion to permit telephonic appearance granted;
- Any and all communication between the headquarters of the Executive Office for Immigration Review and the Memphis and LaSalle immigration courts instructing said immigration courts to deny motions to permit telephonic appearance or about the possibility of a future OPPM regarding motions to permit telephonic appearances;
- Any and all other documents or written communications regarding the recent decisions of immigration judges Rebecca Holt, Vernon Miles and Angela Munson to begin denying motions to permit telephonic appearance, including any dissent or opposition to such policies made by employees of the Memphis and LaSalle immigration courts or communications made to or by the headquarters of the Executive Office for Immigration Review regarding these decisions;
- Any and all other documents or written communications regarding the decision of Richard Averwater to continue allowing motions to permit telephonic appearance;
- Any communications indicating whether the decision to begin denying motions to permit telephonic appearance is temporary or permanent; and
- Any communications indicating whether the decision to begin denying motions to permit telephonic appearance is a local decision made by the Memphis and LaSalle immigration courts or directed by the headquarters of the Executive Office for Immigration Review

Thank you for your consideration. Please feel free to let me know if any clarification is needed.

Nathan R. Bogart,

Immigration Attorney

(b) (6)



www.bogartimmigration.com

Support provided by:

(b) (6)

[Redacted block of text]



U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

5107 Leesburg Pike, Suite 1903
Falls Church, Virginia 22041

September 25, 2018

Nathan R. Bogart
Attorney at Law
2662 E. Joyce Blvd., Ste. 3
Fayetteville, AR 72703

RE: Freedom of Information Act Request
Correspondence

Dear Nathan Bogart:

This response acknowledges receipt of your Freedom of Information Act (FOIA) request by the Executive Office for Immigration Review (EOIR). Your request has been assigned control number: 2018-51756.

If you have filed a fee waiver request, EOIR will address the fee waiver in a separate letter. Otherwise, your request constitutes an agreement to pay fees that may be chargeable up to \$25 without notice. Most requests do not require any fees; however, if the fees for processing the request are estimated to exceed \$25.00, EOIR will notify you before processing the request to determine whether you will commit to paying the fee or whether you wish to narrow the scope of your request to reduce the fee. Fees may be charged for searching records at the rate of \$4.75 (administrative)/\$10.00 (professional) per quarter hour, and for duplication of copies at the rate of \$.05 per copy. The first 100 copies and two hours of research time are not charged, and charges must exceed \$25.00 before we will charge a fee.

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Sincerely,

Mai Phung

Mai Phung



U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

5107 Leesburg Pike, Suite 1903
Falls Church, Virginia 22041

September 25, 2018

Nathan R. Bogart

Attorney at Law

(b) (6) [REDACTED]

RE: Freedom of Information Act Request

Correspondence

Dear Nathan Bogart:

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Sincerely,

Mai Phung

Mai Phung

Phung, Mai (EOIR)

18-51756

attach

- file

From: Nathan Bogart (b) (6)
Sent: Wednesday, September 26, 2018 8:04 AM
To: FOIARequests, EOIR (EOIR)
Subject: Motions to Permit Telephonic Appearance before the Memphis and LaSalle Immigration Courts (Updated)
Attachments: FOIA for Telephonic Motions Info-9.26.2018.pdf

Dear FOIA Officer:

Please accept this updated FOIA request. We request expedited processing. Thank you for your consideration,

Nathan R. Bogart,
Immigration Attorney

(b) (6)



www.bogartimmigration.com

Support provided by:

(b) (6)

[REDACTED]

This email contains neither recommendations nor conclusions of the Immigration Legal Resource Center (ILRC). It is the property of the ILRC, is loaned to you, and must be returned upon request. You are not to copy, distribute, forward, or otherwise disseminate this email without ILRC's prior written consent. Please be advised that the law changes rapidly and frequently, and that this email is not a substitute for legal research and professional legal advice. The ILRC is not responsible for any errors or omissions in this email.



BOGART IMMIGRATION, PLLC
P.O. Box 11003
Fayetteville, AR 72703
(479) 957-9819

September 26, 2018

U.S. Department of Justice
Executive Office for Immigration Review
Office of General Counsel – FOIA Service Center
5107 Leesburg Pike, Suite 1903
Falls Church, VA 22041
E-mail address: EOIR.FOIARequests@usdoj.gov

Re: Request under the Freedom of Information Act for records related to the practice or policy of prohibiting telephonic and/or video appearances in the absence of “extraordinary circumstances” in the Memphis and LaSalle Immigration Courts

Dear FOIA Officer:

Our firm respectfully submits this Freedom of Information Act (“FOIA”) request (“the Request”) for specific records related to what appears to be a new policy or practice in place at the Memphis and LaSalle immigration courts (“the Court”) whereby immigration judges (“IJs”) deny requests to appear telephonically in the absence of “extraordinary circumstances,” even for Master Calendar Hearings at which a respondent might reasonably expect to spend less than ten minutes in front of an IJ.

I. Background

For years, it was the standard practice and policy of the Court to grant motions to appear telephonically solely on the grounds that a respondent and/or counsel’s lack of geographic proximity to the Court presented good cause to do so. This practice, entirely consistent with the Immigration Court Practice Manual, *see* §§ 4.6, Form of Proceedings, and 4.7 Hearings by Video and Telephone Conference, made sense from both a practical and due process perspective, especially given the large geographic jurisdiction of the Court spanning multiple states and metropolitan areas.

It is certainly understood that expecting a noncitizen in proceedings “to understand the complex and intricate immigration system without the assistance of counsel is fundamentally unfair.” *See, e.g.*, United States Commission on Civil Rights, *With Liberty and Justice for All*, 121 (September 2015). We unequivocally support the efforts the Court has historically undertaken to facilitate access to counsel by providing flexible access via telephonic and video appearances.

Unfortunately, based on the recent experience of attorneys practicing within and throughout the Court’s jurisdiction, it would appear the Court has abruptly, and without notice, shifted course, at least in the case of several of the IJs.



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Now, the Court appears to have adopted a new policy or practice whereby the same or similarly-grounded motions as those that have always been approved as a matter of course are being denied on the unexpected grounds that “extraordinary circumstances” are not present to justify a telephonic appearance. The “extraordinary circumstances” standard has no basis in the Immigration Court Practice Manual, the Immigration & Nationality Act, the Code of Federal Regulations or historical practice.

More importantly, such a change would constitute a significant departure from the Court’s past practice, without forewarning, upon which many noncitizens and their counsel have and relied upon in structuring their attorney-client relationships.

Perhaps more so now than ever, a fair and full understanding of the policies and practices of the Court is especially important given that the Department of Homeland Security has increased its enforcement efforts, and, thereby exposed more individuals and families than ever to proceedings before the Court.

Further, release of the requested records is critical to ensure meaningful public access to and debate about how the Government and due process work as a general matter. These records will contribute to the public’s understanding of government policy and inform current and future public discussion about the legality and wisdom of the current administration’s approach to immigration, as well as any resulting harm to the human rights of individuals and families, whether citizen or noncitizen, our nation’s values, and our national security.

II. Requested Records

Bogart Immigration, PLLC seeks the release of the records outlined below.¹ To the extent that treating the request below as divisible (i.e., as if it were made in multiple requests) would allow you to more expeditiously respond to any or all parts, please feel free to do so. With respect to the form of production,² we request that responsive electronic records be provided in their native file format; alternatively, we request that records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession, and that the records be provided in separate, Bates-stamped files.

¹ The term “records” as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audiotapes, emails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials, and studies.

² See 5 U.S.C. § 552(a)(3)(B)



BOGART IMMIGRATION, PLLC
P.O. Box 11003
Fayetteville, AR 72703
(479) 957-9819

We hereby request the following records:

- For the past one hundred and eighty (180) days, records sent to and/or from the national headquarters of the Executive Office for Immigration Review (or the Office of the Chief Immigration Judge) to the Memphis and LaSalle Immigration Courts, including the court administrators, J. Thomas Davis and Hunter Johnson, and the IJs, Richard J. Averwater, Rebecca L. Holt, Vernon Benet Miles and Angela Munson, that include any or all of the following terms: “telephone”; “telephonic”; “video”; and/or “extraordinary”;
- For the past one hundred and eighty (180) days, records sent to and or from IJ Richard J. Averwater that include any or all of the following terms: “telephone”; “telephonic”; “video”; and or “extraordinary”;
- For the past one hundred and eighty (180) days, records sent to and or from IJ Rebecca L. Holt that include any or all of the following terms: “telephone”; “telephonic”; “video”; and or “extraordinary”;
- For the past one hundred and eighty (180) days, records sent to and or from IJ Vernon Benet Miles that include any or all of the following terms: “telephone”; “telephonic”; “video”; and or “extraordinary”;
- For the past one hundred and eighty (180) days, records sent to and or from J. Thomas Davis that include any or all of the following terms: “telephone”; “telephonic”; “video”; and or “extraordinary”;
- For the past one hundred and eighty (180) days, records sent to and or from IJ Angela Munson that include any or all of the following terms: “telephone”; “telephonic”; “video”; and or “extraordinary”;
- For the past one hundred and eighty (180) days, records sent to and or from IJ John A Duck, Jr. that include any or all of the following terms: “telephone”; “telephonic”; “video”; and or “extraordinary”;
- For the past one hundred and eighty (180) days, records sent to and or from IJ Agnelis L. Reese that include any or all of the following terms: “telephone”; “telephonic”; “video”; and or “extraordinary”;
- For the past one hundred and eighty (180) days, records sent to and or from IJ Hunter Johnson that include any or all of the following terms: “telephone”; “telephonic”; “video”; and or “extraordinary”; and



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Fayetteville, AR 72703
(479) 957-9819

- For the past one hundred and eighty (180) days, records sent from any of the above-named individuals containing the terms “telephone”; “telephonic”; “video”; and or “extraordinary” to representatives of the U.S. Department of Homeland Security’s Immigration & Customs Enforcement Office of the Chief Counsel.

Each of the above requests should be read to include any correspondence in which any of the named individuals or their addresses (electronic or physical) appear in the “From,” “To,” “CC,” or “BCC” address lines.

Please note that we do not seek any personally identifiable information about any third party including any petitioner, applicant, or detainee. If responsive records and or information contain personally identifiable information, please redact such information and produce such redacted records in response to this Request.

III. Application for Expedited Processing

We request expedited processing of the above Request pursuant to applicable law and regulations.³ There is a “compelling need” for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.⁴ In addition, the records and information sought relate to a “breaking news story of general public interest.”⁵

- A. Bogart Immigration, PLLC is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity

Bogart Immigration, PLLC is “primarily engaged in disseminating information” within the meaning of the statute and regulations for purposes of this Request. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the public are critical and substantial components of the firm’s work and are among its primary activities. For example:

- Bogart Immigration, PLLC, and its attorneys, in addition to privately representing immigrants in removal proceedings, have helped dozens of individuals apply for citizenship; helped similar numbers of refugees and asylees apply for residency; and have provided immigrants with hours of English language and citizenship exam-related instruction.

³ See 5 U.S.C. § 552(a)(6)(E) and 32 C.F.R. § 1900.34(c); 28 C.F.R. § 16.5(e); 32 C.F.R. § 286.4(d)(3); 22 C.F.R. § 171.12(b).

⁴ 5 U.S.C. § 552(a)(6)(E)(v); see also 32 C.P.R. § 1900.34(c)(2); 28 C.P.R. § 16.5(e)(I)(ii); 32 C.P.R. § 286.4(d)(3)(ii); 22 C.P.R. § 171.12(b)(2).

⁵ 22 C.F.R. § 171.12(b)(2)(i); see also 32 C.F.R. § 1900.34(c)(2) (providing for expedited processing when “the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity”); 32 C.P.R. § 286.4(d)(3)(ii)(A).



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(479) 957-9819

- Bogart Immigration, PLLC engages in the community via social and other forms of media, including Facebook, Twitter, Facebook Live, podcasts and local radio disseminating news and information having to do with immigration laws and procedure.
- Bogart Immigration, PLLC engages in community outreach, conducting seminars and presentations to local groups of interested citizens, noncitizens and attorneys about the latest information regarding immigration laws.

The firm plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records and information requested are not sought for commercial use and the requestors plan to disseminate the information disclosed as a result of this Request to the public at no cost.

B. The records sought are urgently needed to inform the public about actual or alleged government activity

The records and information sought by this Request are urgently needed to inform the public about actual or alleged government activity; moreover, the records sought relate to a breaking news story of general public interest.⁶ Release of the records sought by the Request will aid the American public in drawing its own conclusions about the legitimacy and legality of our immigration system.

Furthermore, the records sought relate to a “matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.”⁷ Given the foregoing, expedited processing should be granted for this Request.

IV. Application for Waiver or Limitation of Fees

No request is made that fees be waived. Should fees be necessary, the firm is happy to make arrangements for their payment.

V. Conclusion

Thank you for your consideration. If you have any questions or need additional information, please do not hesitate to contact us at (479) 957-9819.

Sincerely,

Nathan R. Bogart
(b) (6)

⁶ See 5 U.S.C. § 552(a)(6)(E)(v); see also 32 C.P.R. § 1900.34(c)(2); 28 C.P.R. § 16.5(e)(I)(ii); 32 C.P.R. § 286.4(d)(3)(ii); 22 C.P.R. § 171.12(b)(2).

⁷ See 28 C.F.R. § 16.5(e)(1)(iv).

From: [Schaaf, Joseph R. \(EOIR\)](#)
To: ["61707-85443197@requests.muckrock.com"](#)
Subject: FW: RE: Freedom of Information Act Request #2018-51735
Date: Monday, October 29, 2018 10:42:00 AM

Matthew, a search was initiated, and we await results. Wr/JRS

From: Souza, Crystal (EOIR)
Sent: Friday, October 26, 2018 11:26 AM
To: Schaaf, Joseph R. (EOIR) <Joseph.Schaaf@EOIR.USDOJ.GOV>
Cc: O'Hara, Shelley M. (EOIR) <Shelley.O'Hara@EOIR.USDOJ.GOV>
Subject: FW: RE: Freedom of Information Act Request #2018-51735

FYI

Status FOIA 2018-51735

From: 61707-85443197@requests.muckrock.com <61707-85443197@requests.muckrock.com>
Sent: Friday, October 26, 2018 5:03 AM
To: FOIARequests, EOIR (EOIR) <EOIR.FOIARequests@EOIR.USDOJ.GOV>
Subject: RE: Freedom of Information Act Request #2018-51735

Department of Justice, Executive Office for Immigration Review
FOIA Office
Suite 1903
5107 Leesburg Pike
Falls Church, VA 20530

October 26, 2018

This is a follow up to request number 2018-51735:

To Whom It May Concern:

I wanted to follow up on the following Freedom of Information Act request, copied below, and originally submitted on Sept. 25, 2018. Please let me know when I can expect to receive a response. You had assigned it reference number #2018-51735.

Thanks for your help, and let me know if further clarification is needed.

Filed via MuckRock.com

E-mail (Preferred): 61707-85443197@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/department-justice-executive-office-immigration-review-4122/guidance-on-telephonic-hearings-61707/?email=EOIR.FOIARequests%40usdoj.gov&uuid-login=70caef6d-e212-4698-9d7e-99d826943fe5#agency-reply

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News
DEPT MR 61707
411A Highland Ave
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

On Sept. 26, 2018:

An acknowledgement letter, stating the request is being processed.

On Sept. 25, 2018:

To Whom It May Concern:

Pursuant to the Freedom of Information Act, I hereby request the following records:

The records from January 1, 2018 to the date this request is processed reflecting the agency's guidance to IJs about whether and when to permit an attorney to appear via telephone.

The search should include any e-mail messages sent to any of the following: (1) All_of_Judges@EOIR.USDOJ.GOV; (2) the EOIR e-mail address for Immigration Judge Rebecca Holt, the EOIR e-mail address for Immigration Judge Vernon Miles; or the EOIR e-mail address for Immigration Judge Angela Munson. This should include messages where any of these four recipients is listed in the "to," "cc," or "bcc" fields.

The keywords to search for are "telephonic" or "by telephone"

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Matthew Hoppock

Filed via MuckRock.com

E-mail (Preferred): 61707-85443197@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/department-justice-executive-office-immigration-review-4122/guidance-on-telephonic-hearings-61707/?email=EOJR.FOIARequests%40usdoj.gov&uuid-login=70caef6d-e212-4698-9d7e-99d826943fe5#agency-reply

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MuckRock News
DEPT MR 61707
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Somerville, MA 02144-2516

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From: [Schaaf, Joseph R. \(EOIR\)](#)
To: [Lee-Sullivan, Marcia L. \(EOIR\)](#)
Subject: RE: RE: Freedom of Information Act Request #2018-51805
Date: Monday, October 29, 2018 3:59:00 PM

OK, from now on when I get these ones that are specific to a particular court, I'll go right to the CA.

From: Lee-Sullivan, Marcia L. (EOIR)
Sent: Monday, October 29, 2018 3:34 PM
To: Schaaf, Joseph R. (EOIR) <Joseph.Schaaf@EOIR.USDOJ.GOV>
Subject: RE: RE: Freedom of Information Act Request #2018-51805

I do not mind at all !!!

From: Schaaf, Joseph R. (EOIR)
Sent: Monday, October 29, 2018 3:17 PM
To: Lee-Sullivan, Marcia L. (EOIR) <Marcia.Lee-Sullivan@EOIR.USDOJ.GOV>
Subject: FW: RE: Freedom of Information Act Request #2018-51805

Marcia, did you get anything from Memphis? DO you mind if I go directly to the CA?

From: Schaaf, Joseph R. (EOIR)
Sent: Monday, October 29, 2018 3:16 PM
To: '61720-05451195@requests.muckrock.com' <61720-05451195@requests.muckrock.com>
Subject: FW: RE: Freedom of Information Act Request #2018-51805

Michael, a search has been initiated, and we are awaiting the results.

Wr/
Joseph R. Schaaf
Chief Counsel, Administrative Law
Executive Office for Immigration Review

From: Souza, Crystal (EOIR)
Sent: Monday, October 29, 2018 8:35 AM
To: Schaaf, Joseph R. (EOIR) <Joseph.Schaaf@EOIR.USDOJ.GOV>
Cc: O'Hara, Shelley M. (EOIR) <Shelley.O'Hara@EOIR.USDOJ.GOV>
Subject: FW: RE: Freedom of Information Act Request #2018-51805

Status inquiry

From: 61720-05451195@requests.muckrock.com <61720-05451195@requests.muckrock.com>

Sent: Monday, October 29, 2018 5:08 AM
To: FOIARequests, EOIR (EOIR) <EOIR.FOIARequests@EOIR.USDOJ.GOV>
Subject: RE: Freedom of Information Act Request #2018-51805

Department of Justice, Executive Office for Immigration Review
FOIA Office
Suite 1903
5107 Leesburg Pike
Falls Church, VA 20530

October 29, 2018

This is a follow up to request number 2018-51805:

To Whom It May Concern:

I wanted to follow up on the following Freedom of Information Act request, copied below, and originally submitted on Sept. 25, 2018. Please let me know when I can expect to receive a response. You had assigned it reference number #2018-51805.

Thanks for your help, and let me know if further clarification is needed.

Filed via MuckRock.com

E-mail (Preferred): 61720-05451195@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/department-justice-executive-office-immigration-review-4122/memphis-immigration-court-telephonic-hearing-policy-61720/?uuid-login=04e4b3aa-9118-4712-a0a8-aed9181b01e6&email=EOIR.FOIARequests%40usdoj.gov#agency-reply

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News
DEPT MR 61720
411A Highland Ave
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

On Sept. 27, 2018:
An acknowledgement letter, stating the request is being processed.

On Sept. 25, 2018:

To Whom It May Concern:

Pursuant to the Freedom of Information Act, I hereby request the following records:

The Catholic Legal Immigration Network, Inc. (“CLINIC”) submits this Freedom of Information Act (“FOIA”) request (the “Request”) for specific records related to what appears to be a new policy or practice in place at the Memphis Immigration Court (the “Court”) whereby Immigration Judges (“IJ”) deny requests to appear telephonically in the absence of “extraordinary circumstances,” even for Master Calendar hearings at which a respondent might reasonably expect to spend less than ten minutes in front of the Court. Please see the correspondence attached to this letter for further details.

I. Background

Previously and until recently, it was the practice and or policy of the Court to grant motions to appear telephonically solely on grounds that a respondent and or counsel’s lack of geographic proximity to the Court presented good cause to do so. This practice, entirely consistent with the Immigration Court Practice Manual, see §§ 4.6, Form of the Proceedings, and 4.7, Hearings by Video or Telephone Conference, made sense from both a practical and constitutional perspective.

As you know, expecting an immigrant in proceedings “to understand the complex and intricate immigration system without the assistance of counsel is fundamentally unfair.” See, e.g., United States Commission on Civil Rights, With Liberty and Justice for All, 121 (September 2015), available at <http://bit.ly/2ND12xw> (last accessed September 25, 2018). Thus, the efforts that the Court had undertaken to facilitate access to counsel by providing flexible access to the Court were laudable.

Unfortunately, it would appear that the Court has abruptly shifted course. Now, the Court appears to have adopted a new policy or practice whereby the same or similarly-grounded motions as those referenced above are being denied on heretofore unheard of grounds that “extraordinary circumstances” are not present such that relief would be warranted. Such a change would constitute a significant departure from the Court’s past practice—upon which many respondents and counsel have and will continue to rely in structuring their attorney-client relationships unless adequately informed otherwise.

Perhaps more so now than ever, a fair and full understanding of the policies and practices of the Court is especially important given that the Department has increased its enforcement activities, and, thereby, exposes more and more individuals to proceedings at the Court. Further, release of the requested records is critical to ensure meaningful public access to and debate about how the Government works as a general matter. These records will contribute to the American public’s understanding of governmental policy and inform current and future public discussion about the legality and wisdom of the current administration’s ‘approach’ to immigration, as well as any resulting harm to individuals’ human right, our nation’s values, and our national security.

II. Requested Records

CLINIC seeks the release of the records outlined below. To the extent that treating the request below as divisible (i.e., as if it were made in multiple requests) would allow you to more expeditiously respond to any or all constituent parts, please do so. With respect to the form of

production, CLINIC request that responsive electronic records be provided in their native file format. Alternatively, CLINIC requests that records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

CLINIC hereby requests the following records:

- o For the past one hundred and eighty (180) days, records sent to and or from IJ Richard J. Averwater that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- o For the past one hundred and eighty (180) days, records sent to and or from IJ Rebecca L. Holt that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- o For the past one hundred and eighty (180) days, records sent to and or from IJ Vernon Benet Miles that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- o For the past one hundred and eighty (180) days, records sent to and or from J. Thomas Davis that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";

Each of the above requests should be read to include any correspondence in which any of the named individuals or their addresses (electronic or physical) appear in the "From", "To", "CC", or "BCC" address lines.

Note that CLINIC does not seek any personally identifiable information about any third party including any petitioner, applicant, and or detainee. If responsive records and or information contain personally identifiable information, please redact such information and produce such redacted records in response to this Request.

III. Application for Expedited Processing

CLINIC requests expedited processing of the above Request pursuant to applicable law and regulations. There is a "compelling need" for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity. In addition, the records and information sought relate to a "breaking news story of general public interest."

A. CLINIC is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

CLINIC is "primarily engaged in disseminating information" within the meaning of the statute and regulations. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of CLINIC's work and are among its primary activities. For example:

- o Since 1997, CLINIC's programs have helped more than 100,000 people apply for citizenship; helped approximately 12,000 refugees and asylees apply for green cards; and have provided immigrants with over 15,000 hours of English language instruction.
- o CLINIC represents more than 170 dioceses and religious communities that bring foreign-

born priests, sisters, seminarians and religious laypersons to the United States each year.

- o CLINIC trained more than 7,000 immigration practitioners in 2012.
- o CLINIC's Attorney-of-the-Day Help Line fields at least 20 calls per day from member agencies on the most effective strategy for representing clients. CLINIC's attorneys staff the hotline which covers topics such as family-based immigration, naturalization, temporary employment authorization, and relief from removal.
- o CLINIC's pro bono attorneys have filed briefs and represented more than 500 immigrants before the Board of Immigration Appeals (BIA).

CLINIC plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records and information requested are not sought for commercial use and the requestors plan to disseminate the information disclosed as a result of this Request to the public at no cost.

B. The records sought are urgently needed to inform the public about actual or alleged government activity.

The records and information sought by this Request are urgently needed to inform the public about actual or alleged government activity; moreover, the records sought relate to a breaking news story of general public interest. Release of the records sought by the Request will aid the American public in drawing its own conclusions about the legitimacy and legality of our immigration system. Moreover, the records sought relate to a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence." Given the foregoing, expedited processing should be granted for this Request.

IV. Application for Waiver or Limitation of Fees

CLINIC asks that all fees associated with this Request be waived because disclosure of the requested records and information will contribute significantly to public understanding of the governmental activities identified above and because the disclosure is not in CLINIC's commercial interest.

A. Disclosure of the records and information is in the public interest.

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities related to the means by which the government detains certain immigrants. CLINIC has the capacity and intent to disseminate widely the requested information to the public. CLINIC provides technical support to the members of its network on a broad range of immigration law topics. The network includes approximately 1,200 attorneys and accredited representatives and assists some 600,000 clients, parishioners, and community members with immigration matters annually. CLINIC publishes books, produces a monthly newsletter, and provides in-person training, online courses, and webinars on a variety of immigration law issues including those affecting detained individuals. In addition, CLINIC's materials are disseminated to the public through its website, www.cliniclegal.org, which for the past couple of months has received approximately 100,000 unique views per month.

Information obtained through this FOIA request will contribute to CLINIC's public education materials on the immigration system and will assist CLINIC in providing technical assistance to nonprofit legal services providers and pro bono attorneys who represent individuals in immigration detention. Finally, CLINIC has regular contact with national print and news

media and may share information gleaned from this Request with interested parties.

B. Disclosure of the information is not in CLINIC's commercial interest.

CLINIC is a not-for-profit organization. CLINIC seeks the requested information and records for the purpose of educating the public and not for the purpose of commercial gain. CLINIC will also use the information obtained to inform our organization's technical assistance and training programs, which provide free consultation and resources to immigrants and their attorneys across the United States.

Thank you for your prompt attention to this request. Please reply to this request within the timeframe provided by law. If portions of the requested records and or information are claimed to be exempt from disclosure under FOIA, please indicate the specific reasons for the alleged exemptions, the number of pages withheld, and the dates of the records withheld, producing the remaining non-exempt portions.

Please do not hesitate to contact us should you have any questions or concerns.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Michael Edelman

Filed via MuckRock.com

E-mail (Preferred): 61720-05451195@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/department-justice-executive-office-immigration-review-4122/memphis-immigration-court-telephonic-hearing-policy-61720/?uuid-login=04e4b3aa-9118-4712-a0a8-aed9181b01e6&email=EOIR.FOIARequests%40usdoj.gov#agency-reply

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For mailed responses, please address (see note):

MuckRock News
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Schaaf, Joseph R. (EOIR)

From: Schaaf, Joseph R. (EOIR)
Sent: Monday, November 05, 2018 2:51 PM
To: Davis, J.Thomas (EOIR)
Subject: RE: 2018-51735 (Emails)

Thank you Tom. V/r Joe

From: Davis, J.Thomas (EOIR)
Sent: Monday, November 05, 2018 9:52 AM
To: Averwater, Richard (EOIR) <Richard.Averwater@EOIR.USDOJ.GOV>; Holt, Rebecca L. (EOIR) <Rebecca.Holt@EOIR.USDOJ.GOV>; Miles, Vernon Benet (EOIR) <VernonBenet.Miles@EOIR.USDOJ.GOV>
Cc: Mart, H. Kevin (EOIR) <H.Kevin.Mart@EOIR.USDOJ.GOV>; Schaaf, Joseph R. (EOIR) <Joseph.Schaaf@EOIR.USDOJ.GOV>
Subject: FW: 2018-51735 (Emails)

I am forwarding to each of you e-mails sent to me by Joe Schaaf with EOIR OGC. His e-mails pertain to FOIA requests filed with EOIR. I will be sending to each of you two more e-mails pertaining to the same subject matter.

From: Schaaf, Joseph R. (EOIR)
Sent: Friday, November 02, 2018 11:31 AM
To: Davis, J.Thomas (EOIR) <Thomas.Davis@EOIR.USDOJ.GOV>
Cc: Lee-Sullivan, Marcia L. (EOIR) <Marcia.Lee-Sullivan@EOIR.USDOJ.GOV>
Subject: FW: 2018-51735 (Emails)

Tom, going VFR direct to you. There are three inquiries regarding telephonic policies at Memphis. Please see below. Please ask Judges Holt, Miles and Munson if they have any responsive records. More to follow.

V/r
Joseph R. Schaaf
Chief Counsel, Administrative Law
Executive Office for Immigration Review
(b) (6)

From: Schaaf, Joseph R. (EOIR)
Sent: Tuesday, October 02, 2018 4:32 PM
To: Lee-Sullivan, Marcia L. (EOIR) <Marcia.Lee-Sullivan@EOIR.USDOJ.GOV>
Subject: FW: 2018-51735 (Emails)

Marcia, this and two related requests have something to do with Memphis changing its telephonic policies. Im not sure if it was a local decision or OCIJ. Please check OCIJ-wide and also directly with Memphis. V/r JRS

From: Phung, Mai (EOIR)
Sent: Tuesday, September 25, 2018 3:55 PM
To: Schaaf, Joseph R. (EOIR) <Joseph.Schaaf@EOIR.USDOJ.GOV>
Cc: Souza, Crystal (EOIR) <Crystal.Souza@EOIR.USDOJ.GOV>
Subject: 2018-51735 (Emails)

From: 61707-85443197@requests.muckrock.com <61707-85443197@requests.muckrock.com>
Sent: Tuesday, September 25, 2018 9:12 AM
To: FOIARequests, EOIR (EOIR) <FOIR.FOIARequests@EOIR.USDOJ.GOV>
Subject: Freedom of Information Act Request: Guidance on Telephonic Hearings

Department of Justice, Executive Office for Immigration Review
FOIA Office
Suite 1903
5107 Leesburg Pike
Falls Church, VA 20530

September 25, 2018

To Whom It May Concern:

Pursuant to the Freedom of Information Act, I hereby request the following records:

The records from January 1, 2018 to the date this request is processed reflecting the agency's guidance to IJs about whether and when to permit an attorney to appear via telephone.

The search should include any e-mail messages sent to any of the following: (1) [All_of_Judges@EOIR.USDOJ.GOV](mailto>All_of_Judges@EOIR.USDOJ.GOV); (2) the EOIR e-mail address for Immigration Judge Rebecca Holt, the EOIR e-mail address for Immigration Judge Vernon Miles; or the EOIR e-mail address for Immigration Judge Angela Munson. This should include messages where any of these four recipients is listed in the "to," "cc," or "bcc" fields.

The keywords to search for are "telephonic" or "by telephone"

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Matthew Hoppock

Filed via MuckRock.com

E-mail (Preferred): 61707-85443197@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/department-justice-executive-office-immigration-review-4122/guidance-on-telephonic-hearings-61707/?email=EOIR.FOIARequests%40usdoj.gov&uuid-login=e25faeb8-3474-4251-8723-1e8c78b7cc68#agency-reply

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MuckRock News

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From: [Davis, J.Thomas \(EOIR\)](#)
To: [Schaaf, Joseph R. \(EOIR\)](#)
Cc: [Mart, H. Kevin \(EOIR\)](#); [St.Jean, Amanda \(EOIR\)](#)
Subject: FW: Stakeholder Meeting
Date: Thursday, November 08, 2018 10:42:45 AM

Joe,

Per our conversation re: the FOIA requests related to telephonic hearings I am forwarding this e-mail to you since it contains information related to telephonic motions. I am cc'ing Amanda to bring her into the loop if you need to speak with her since she was present at the stakeholders' meeting conducted on Thursday, October 4.

Tom

From: St.Jean, Amanda (EOIR)
Sent: Friday, September 28, 2018 11:32 AM
To: Mart, H. Kevin (EOIR) <H.Kevin.Mart@EOIR.USDOJ.GOV>
Cc: Davis, J.Thomas (EOIR) <Thomas.Davis@EOIR.USDOJ.GOV>
Subject: Stakeholder Meeting

Hi Judge Mart and Tom,

In preparation for the stakeholder meeting next Thursday at 10 a.m., I wanted to provide you with the status and see if you have any comments or concerns.

Tom- Will you be able to attend?

UPDATES: Are there any updates or changes that you would like covered during the meeting?

AGENDA: Today is the last day for attendees to submit agenda item questions. The following questions were just submitted so far. I have drafted some responses but would like your input before I discuss with HQ.

1. By now you've probably gotten a ton of questions about recent denials of motions for telephonic appearances. This change doesn't affect our agency's attorneys so much (we're based in Memphis), but it does affect the ability of our remote clients to appear from a nearby attorney's office. I expect y'all are already planning to address this issue - we'd just like to know what the current policy is, guidance/examples of what might constitute "exceptional circumstances" for a telephonic appearance, etc.

(b) (5)



2. Does the court plan to continue holding juvenile dockets on Tuesday mornings for the foreseeable future? (Occasionally the court sneaks in a juvenile docket on an off-day, but usually the schedule is pretty reliable from our standpoint as an LOPC provider).

(b) (5)



Thanks,
Amanda

From: [Davis, J.Thomas \(EOIR\)](#)
To: [Schaaf, Joseph R. \(EOIR\)](#)
Cc: [Mart, H. Kevin \(EOIR\)](#); [St.Jean, Amanda \(EOIR\)](#)
Subject: FW: Stakeholder Meeting
Date: Thursday, November 08, 2018 10:46:01 AM

Joe,

This e-mail is related to the last one I sent you. I responded to the questions Amanda had received from the private bar prior to the stakeholders meeting. I do not have any other written documents related to telephonic motions.

Tom

From: St.Jean, Amanda (EOIR)
Sent: Friday, September 28, 2018 12:43 PM
To: Davis, J.Thomas (EOIR) <Thomas.Davis@EOIR.USDOJ.GOV>; Mart, H. Kevin (EOIR) <H.Kevin.Mart@EOIR.USDOJ.GOV>
Subject: RE: Stakeholder Meeting

Tom,

Thanks for the info- very helpful! I will be in person but Judge Mart will participate either telephonically or VTC, depending on the room issue.

My apologies for not checking in with you earlier about the meeting space. Currently, we only have 6 rsvp's, would there be any rooms we could hold the meeting, such as a pro bono room or conference room?

Amanda

From: Davis, J.Thomas (EOIR)
Sent: Friday, September 28, 2018 12:41 PM
To: St.Jean, Amanda (EOIR) <Amanda.StJean@EOIR.USDOJ.GOV>; Mart, H. Kevin (EOIR) <H.Kevin.Mart@EOIR.USDOJ.GOV>
Subject: RE: Stakeholder Meeting

Amanda/Judge Mart,
Greetings and TGIF. I will be able to attend....where and how will the meeting be conducted? VTC? In person? Telephonic? All of the courtrooms will be in use that morning. I have quickly looked at the questions. As for telephonic hearings which had been the practice all telephonic motions, as you have stated, are at the discretion of the case assigned IJ. I never guess how an IJ will rule on any type of motion. Let me think about that one a bit more since this matter is fairly new. Your answer on the second question was dead on. Juvenile master calendar cases will continue to be heard by Judge Holt on Tuesdays mornings in courtroom 1. On occasion we add a juvenile master on another day and we will do our best to get the word out. At this time no additional juvenile masters are scheduled through the end of the year.

Take care.

Tom

From: St Jean, Amanda (EOIR)
Sent: Friday, September 28, 2018 11:32 AM
To: Mart, H. Kevin (EOIR) <H.Kevin.Mart@EOIR.USDOJ.GOV>
Cc: Davis, J.Thomas (EOIR) <J.Thomas.Davis@EOIR.USDOJ.GOV>
Subject: Stakeholder Meeting

Hi Judge Mart and Tom,

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Tom- Will you be able to attend?

UPDATES: Are there any updates or changes that you would like covered during the meeting?

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1. By now you've probably gotten a ton of questions about recent denials of motions for telephonic appearances. This change doesn't affect our agency's attorneys so much (we're based in Memphis), but it does affect the ability of our remote clients to appear from a nearby attorney's office. I expect y'all are already planning to address this issue – we'd just like to know what the current policy is, guidance/examples of what might constitute "exceptional circumstances" for a telephonic appearance, etc.

(b) (5)



2. Does the court plan to continue holding juvenile dockets on Tuesday mornings for the foreseeable future? (Occasionally the court sneaks in a juvenile docket on an off-day, but usually the schedule is pretty reliable from our standpoint as an LOPC provider).

(b) (5)



Thanks,
Amanda

Schaaf, Joseph R. (EOIR)

From: Davis, J.Thomas (EOIR)
Sent: Monday, November 05, 2018 8:22 AM
To: Schaaf, Joseph R. (EOIR)
Cc: Mart, H. Kevin (EOIR)
Subject: Re: FOIA 2018-51756

Joe,
I am going through my email and have read the last two requests. I will respond to you when I get in. I will also forward the emails to the IJs.

Tom

Sent from my iPhone

On Nov 2, 2018, at 11:52 AM, Schaaf, Joseph R. (EOIR) <Joseph.Schaaf@EOIR.USDOJ.GOV> wrote:

(b) (5)



- For the past one hundred and eighty (180) days, records sent to and/or from the national headquarters of the Executive Office for Immigration Review (or the Office of the Chief Immigration Judge) to the Memphis and LaSalle Immigration Courts, including the court administrators, J. Thomas Davis and Hunter Johnson, and the IJs, Richard J. Averwater, Rebecca L. Holt, Vernon Benet Miles and Angela Munson, that include any or all of the following terms: "telephone"; "telephonic"; "video"; and/or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from IJ Richard J. Averwater that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from IJ Rebecca L. Holt that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from IJ Vernon Benet Miles that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from J. Thomas Davis that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from IJ Angela Munson that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from IJ John A Duck, Jr. that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";

- For the past one hundred and eighty (180) days, records sent to and or from IJ Agnelis L. Reese that include any or all of the following terms: “telephone”; “telephonic”; “video”; and or “extraordinary”;
- For the past one hundred and eighty (180) days, records sent to and or from IJ Hunter Johnson that include any or all of the following terms: “telephone”; “telephonic”; “video”; and or “extraordinary”; and
- For the past one hundred and eighty (180) days, records sent from any of the above-named individuals containing the terms “telephone”; “telephonic”; “video”; and or “extraordinary” to representatives of the U.S. Department of Homeland Security’s Immigration & Customs Enforcement Office of the Chief Counsel.

Call me at (b) (6) if any questions. V/r JRS

From: Schaaf, Joseph R. (EOIR)
Sent: Friday, November 02, 2018 12:41 PM
To: Davis, J.Thomas (EOIR) <Thomas.Davis@EOIR.USDOJ.GOV>
Cc: Lee-Sullivan, Marcia L. (EOIR) <Marcia.Lee-Sullivan@EOIR.USDOJ.GOV>
Subject: RE: 2018-51805

Tom, second request:

CLINIC hereby requests the following records:

- o For the past one hundred and eighty (180) days, records sent to and or from IJ Richard J. Averwater that include any or all of the following terms: “telephone”; “telephonic”; “video”; and or “extraordinary”;
- o For the past one hundred and eighty (180) days, records sent to and or from IJ Rebecca L. Holt that include any or all of the following terms: “telephone”; “telephonic”; “video”; and or “extraordinary”;
- o For the past one hundred and eighty (180) days, records sent to and or from IJ Vernon Benet Miles that include any or all of the following terms: “telephone”; “telephonic”; “video”; and or “extraordinary”;
- o For the past one hundred and eighty (180) days, records sent to and or from J. Thomas Davis that include any or all of the following terms: “telephone”; “telephonic”; “video”; and or “extraordinary”;

(b) (5)

V/r Joe

From: Schaaf, Joseph R. (EOIR)
Sent: Friday, November 02, 2018 12:31 PM
To: Davis, J.Thomas (EOIR) <Thomas.Davis@EOIR.USDOJ.GOV>

Cc: Lee-Sullivan, Marcia L. (EOIR) <Marcia.Lee-Sullivan@EOIR.USDOJ.GOV>
Subject: FW: 2018-51735 (Emails)

Tom, going VFR direct to you. There are three inquiries regarding telephonic policies at Memphis. Please see below. Please ask Judges Holt, Miles and Munson if they have any responsive records. More to follow.

V/r

Joseph R. Schaaf
Chief Counsel, Administrative Law
Executive Office for Immigration Review
(b) (6) [REDACTED]

From: Schaaf, Joseph R. (EOIR)
Sent: Tuesday, October 02, 2018 4:32 PM
To: Lee-Sullivan, Marcia L. (EOIR) <Marcia.Lee-Sullivan@EOIR.USDOJ.GOV>
Subject: FW: 2018-51735 (Emails)

Marcia, this and two related requests have something to do with Memphis changing its telephonic policies. Im not sure if it was a local decision or OCIJ. Please check OCIJ-wide and also directly with Memphis. V/r JRS

From: Phung, Mai (EOIR)
Sent: Tuesday, September 25, 2018 3:55 PM
To: Schaaf, Joseph R. (EOIR) <Joseph.Schaaf@EOIR.USDOJ.GOV>
Cc: Souza, Crystal (EOIR) <Crystal.Souza@EOIR.USDOJ.GOV>
Subject: 2018-51735 (Emails)

From: 61707-85443197@requests.muckrock.com <61707-85443197@requests.muckrock.com>
Sent: Tuesday, September 25, 2018 9:12 AM
To: FOIARequests, EOIR (EOIR) <EOIR.FOIARequests@EOIR.USDOJ.GOV>
Subject: Freedom of Information Act Request: Guidance on Telephonic Hearings

Department of Justice, Executive Office for Immigration Review
FOIA Office
Suite 1903
5107 Leesburg Pike
Falls Church, VA 20530

September 25, 2018

To Whom It May Concern:

Pursuant to the Freedom of Information Act, I hereby request the following records:

The records from January 1, 2018 to the date this request is processed reflecting the agency's guidance to IJs about whether and when to permit an attorney to appear via telephone.

The search should include any e-mail messages sent to any of the following: (1)

All_of_Judges@EOIR.USDOJ.GOV; (2) the EOIR e-mail address for Immigration Judge Rebecca Holt, the EOIR e-mail address for Immigration Judge Vernon Miles; or the EOIR e-mail address for Immigration Judge Angela Munson. This should include messages where any of these four recipients is listed in the "to," "cc," or "bcc" fields.

The keywords to search for are "telephonic" or "by telephone"

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Matthew Hoppock

Filed via MuckRock.com

E-mail (Preferred): 61707-85443197@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/department-justice-executive-office-immigration-review-4122/guidance-on-telephonic-hearings-61707/?email=EOIR.FOIARequests%40usdoj.gov&uuid-login=e25faeb8-3474-4251-8723-1e8c78bfcc68#agency-reply

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News
DEPT MR 61707
411A Highland Ave
Somerville, MA 02144-2516

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Schaaf, Joseph R. (EOIR)

From: Averwater, Richard (EOIR)
Sent: Monday, November 05, 2018 1:46 PM
To: Davis, J.Thomas (EOIR)
Cc: Mart, H. Kevin (EOIR); Schaaf, Joseph R. (EOIR)
Subject: RE: FOIA 2018-51756

Tom, I have no emails I know of regarding whether or not to hold telephonic Court hearings.

We were told verbally by ACIJ Mart that it was up to each individual Judge, but I don't recall the date exactly when he told us that.

Thank you,

Richard Averwater
Memphis, TN

From: Davis, J.Thomas (EOIR)
Sent: Monday, November 05, 2018 8:53 AM
To: Averwater, Richard (EOIR) <Richard.Averwater@EOIR.USDOJ.GOV>; Holt, Rebecca L. (EOIR) <Rebecca.Holt@EOIR.USDOJ.GOV>; Miles, Vernon Benet (EOIR) <VernonBenet.Miles@EOIR.USDOJ.GOV>
Cc: Mart, H. Kevin (EOIR) <H.Kevin.Mart@EOIR.USDOJ.GOV>; Schaaf, Joseph R. (EOIR) <Joseph.Schaaf@EOIR.USDOJ.GOV>
Subject: FW: FOIA 2018-51756

From: Schaaf, Joseph R. (EOIR)
Sent: Friday, November 02, 2018 11:52 AM
To: Davis, J.Thomas (EOIR) <Thomas.Davis@EOIR.USDOJ.GOV>; Johnson, Hunter (EOIR) <Hunter.Johnson@EOIR.USDOJ.GOV>
Cc: Lee-Sullivan, Marcia L. (EOIR) <Marcia.Lee-Sullivan@EOIR.USDOJ.GOV>
Subject: FOIA 2018-51756

(b) (5)

- For the past one hundred and eighty (180) days, records sent to and/or from the national headquarters of the Executive Office for Immigration Review (or the Office of the Chief Immigration Judge) to the Memphis and LaSalle Immigration Courts, including the court administrators, J. Thomas Davis and Hunter Johnson, and the IJs, Richard J. Averwater, Rebecca L. Holt, Vernon Benet Miles and Angela Munson, that include any or all of the following terms: "telephone"; "telephonic"; "video"; and/or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from IJ Richard J. Averwater that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from IJ Rebecca L. Holt that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";

- For the past one hundred and eighty (180) days, records sent to and or from IJ Vernon Benet Miles that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from J. Thomas Davis that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from IJ Angela Munson that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from IJ John A Duck, Jr. that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from IJ Agnelis L. Reese that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from IJ Hunter Johnson that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary"; and
- For the past one hundred and eighty (180) days, records sent from any of the above-named individuals containing the terms "telephone"; "telephonic"; "video"; and or "extraordinary" to representatives of the U.S. Department of Homeland Security's Immigration & Customs Enforcement Office of the Chief Counsel.

Call me at (b) (6) if any questions. V/r JRS

From: Schaaf, Joseph R. (EOIR)
Sent: Friday, November 02, 2018 12:41 PM
To: Davis, J.Thomas (EOIR) <Thomas.Davis@EOIR.USDOJ.GOV>
Cc: Lee-Sullivan, Marcia L. (EOIR) <Marcia.Lee-Sullivan@EOIR.USDOJ.GOV>
Subject: RE: 2018-51805

Tom, second request:

CLINIC hereby requests the following records:

- o For the past one hundred and eighty (180) days, records sent to and or from IJ Richard J. Averwater that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
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- o For the past one hundred and eighty (180) days, records sent to and or from IJ Vernon Benet Miles that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- o For the past one hundred and eighty (180) days, records sent to and or from J. Thomas Davis that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";

(b) (5)

V/r Joe

From: Schaaf, Joseph R. (EOIR)
Sent: Friday, November 02, 2018 12:31 PM
To: Davis, J.Thomas (EOIR) <Thomas.Davis@EOIR.USDOJ.GOV>
Cc: Lee-Sullivan, Marcia L. (EOIR) <Marcia.Lee-Sullivan@EOIR.USDOJ.GOV>
Subject: FW: 2018-51735 (Emails)

Tom, going VFR direct to you. There are three inquiries regarding telephonic policies at Memphis. Please see below. Please ask Judges Holt, Miles and Munson if they have any responsive records. More to follow.

V/r
Joseph R. Schaaf
Chief Counsel, Administrative Law
Executive Office for Immigration Review
(b) (6)

From: Schaaf, Joseph R. (EOIR)
Sent: Tuesday, October 02, 2018 4:32 PM
To: Lee-Sullivan, Marcia L. (EOIR) <Marcia.Lee-Sullivan@EOIR.USDOJ.GOV>
Subject: FW: 2018-51735 (Emails)

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Subject: 2018-51735 (Emails)

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Subject: Freedom of Information Act Request: Guidance on Telephonic Hearings

Department of Justice, Executive Office for Immigration Review
FOIA Office
Suite 1903
5107 Leesburg Pike
Falls Church, VA 20530

September 25, 2018

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All_of_Judges@EOIR.USDOJ.GOV; (2) the EOIR e-mail address for Immigration Judge Rebecca Holt, the EOIR e-mail address for Immigration Judge Vernon Miles; or the EOIR e-mail address for Immigration Judge Angela Munson. This should include messages where any of these four recipients is listed in the "to," "cc," or "bcc" fields.

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Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Matthew Hoppock

Filed via MuckRock.com

E-mail (Preferred): 61707-85443197@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/department-justice-executive-office-immigration-review-4122/guidance-on-telephonic-hearings

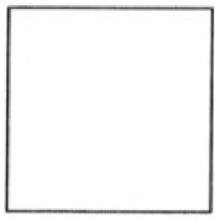
[61707?email=EOIR.FOIARequests%40usdoj.gov&uuid-login=e25faeb8-3474-4251-8723-1e8c78bfcc68#agency-reply](https://www.muckrock.com/accounts/agency_login/department-justice-executive-office-immigration-review-4122/guidance-on-telephonic-hearings?61707?email=EOIR.FOIARequests%40usdoj.gov&uuid-login=e25faeb8-3474-4251-8723-1e8c78bfcc68#agency-reply)

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Schaaf, Joseph R. (EOIR)

From: Davis, J.Thomas (EOIR)
Sent: Thursday, November 08, 2018 10:22 AM
To: Schaaf, Joseph R. (EOIR)
Cc: Mart, H. Kevin (EOIR)
Subject: FW: Telephonic Hearings

Joe,

Good morning. Per our phone conversation this is the e-mail I received from (b) (6) the AILA liaison, re: (b) (6) e-mail regarding the telephonic hearings. I will be forwarding to you the information I have regarding the stakeholders' meeting where telephonic hearings were discussed with members of the private bar. As we discussed none of the IJs have any written documents related to motions for telephonic appearances.

Please let me know if you have any questions re: this information. I appreciate your assistance with this matter.
Tom

From: Mart, H. Kevin (EOIR)
Sent: Tuesday, September 25, 2018 2:31 PM
To: Davis, J.Thomas (EOIR) <Thomas.Davis@EOIR.USDOJ.GOV>
Subject: RE: Telephonic Hearings

Whether a judge allows a telephonic hearing is left to the judge's discretion. The regs say that an IJ may conduct telephonic hearings. There is no mandatory language. Also the CA does not get involved with an IJs rulings on motions. Each motion is decided upon by the IJ handling that case.

From: Davis, J.Thomas (EOIR)
Sent: Tuesday, September 25, 2018 2:51 PM
To: Mart, H. Kevin (EOIR) <H.Kevin.Mart@EOIR.USDOJ.GOV>
Subject: Telephonic Hearings

Judge Mart,

Good afternoon. Below is an e-mail shared with me by (b) (6) local AILA liaison. This type of reaction was expected, but just making you aware of the matter. As we all discussed most Immigration Courts do not conduct telephonic hearings. The firms will simply have to make a business decision.

Take care.

Tom

Dear (b) (6)

I hope this email finds you well. I am reaching out to you, as the AILA EOIR Liaison, regarding Judge Holt's and Judge Miles' recent change in policy regarding telephonic appearance for master calendar hearings. It seems that these judges are now routinely denying motions for these hearings. As of this morning, I received orders from both judges denying our firm's motion for telephonic appearance because there are no "extraordinary circumstances" present.

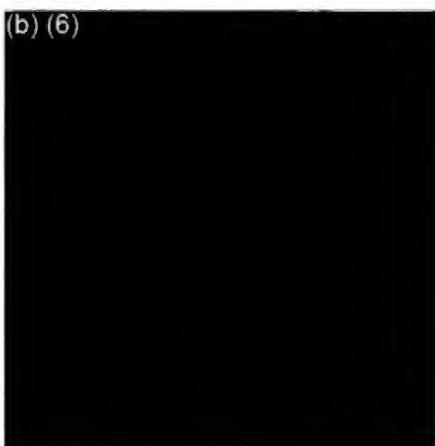
Our attorneys (b) (6) and I, all live and practice in Little Rock, Arkansas. The trip to Memphis takes us anywhere from 2 ½ - 3 hours *each way* on average, and can take even longer if there are accidents, construction, or bad weather. That means that we lose almost an entire day of work to travel each time we have to travel to Memphis. We generally have master calendar hearings before the Memphis Immigration Court 2-4 days/week. It's simply not feasible for a firm of our size to lose an attorney that many days/week for such short (3-5 minute), routine hearings. If our attorneys can't appear telephonically at master calendar hearings, the reality is that we will not be able to represent respondents before these judges. Our clients are already on payment plans and can't afford for us to increase our fees to cover additional travel time or to pay a local Memphis attorney to cover a master calendar hearing. Our firm isn't comfortable or willing to take on the increased liability of having one of our attorneys driving to and from Memphis on an almost daily basis, or the increased liability of having a local Memphis attorney who isn't familiar with a case cover a master calendar hearing. These circumstances have existed as long as we have practiced before the Memphis Immigration Court, and our motions for telephonic appearances have always been granted. Although at first blush the judges may not consider our distance from/travel time to the Court an "extraordinary circumstance," it is sufficiently extraordinary as to significantly impede our ability to take cases before the Memphis Immigration Court.

I know that other members of the private bar are in the same/similar situation, and I think the result will be that fewer attorneys will represent respondents before the Memphis Immigration Court, which will in turn result in more pro se respondents before the Court. Without any explanation from the judges as to why they've started denying telephonic appearances, I can only assume that the underlying rationale is that telephonic hearings are taking too long because judges have to get the attorneys on the phone. I can only speak for our firm when I say that we are always at our desk waiting and ready for the judge's call. (In all my years practicing before the Court, I can recall only one time that Judge Holt called me and I was in the restroom) From what I've seen in the Court and heard from other attorneys and judges, hearings with pro se respondents generally take longer than hearings in which the respondents are represented by counsel. So, if the judges are trying to be efficient with their time in order to complete their master calendar dockets, an increase in pro se respondents will likely have the opposite effect.

I hope that you are able to discuss this matter with Tom Davis so that there can hopefully be a quick resolution to the matter. In the meantime, our office is making the necessary arrangements for pending cases and taking this new policy into consideration when accepting new cases. I hope to hear from you soon.

Thanks,

(b) (6)



(b) (6)



J. Thomas Davis
Court Administrator
USDOJ/EOIR/Immigration Court
80 Monroe Ave, Suite 501
Memphis, TN 38103

From: [Davis, J.Thomas \(EOIR\)](#)
To: [Schaaf, Joseph R. \(EOIR\)](#)
Subject: FW: Telephonic Hearings
Date: Tuesday, November 27, 2018 3:25:22 PM

From: Mart, H. Kevin (EOIR)
Sent: Tuesday, September 25, 2018 2:31 PM
To: Davis, J.Thomas (EOIR) <Thomas.Davis@EOIR.USDOJ.GOV>
Subject: RE: Telephonic Hearings

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To: Mart, H. Kevin (EOIR) <H.Kevin.Mart@EOIR.USDOJ.GOV>
Subject: Telephonic Hearings

Judge Mart,
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Take care.

Tom

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Our attorneys, (b) (6) [REDACTED] and I, all live and practice in Little Rock, Arkansas. The trip to Memphis takes us anywhere from 2 1/2 - 3 hours **each way** on average, and can take even longer if there are accidents, construction, or bad weather. That means that we lose almost an entire day of work to travel each time we have to travel to Memphis. We generally have master calendar hearings before the Memphis Immigration Court 2-4 days/week. It's simply not feasible for a firm of our size to lose an attorney that many days/week for such short (3-5 minute), routine hearings. If our attorneys can't appear telephonically at master calendar hearings, the reality is that we will not be able to represent respondents before these judges. Our clients are already on payment plans and can't afford for us to increase our fees to cover additional travel time or to pay a

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I hope that you are able to discuss this matter with Tom Davis so that there can hopefully be a quick resolution to the matter. In the meantime, our office is making the necessary arrangements for pending cases and taking this new policy into consideration when accepting new cases. I hope to hear from you soon.

Thanks,

(b) [REDACTED]

J. Thomas Davis
Court Administrator
USDOJ/EOIR/Immigration Court
80 Monroe Ave, Suite 501
Memphis, TN 38103

From: [Davis, J.Thomas \(EOIR\)](#)
To: [Schaaf, Joseph R. \(EOIR\)](#)
Subject: Stakeholder Meeting
Date: Tuesday, November 27, 2018 3:29:59 PM

From: St Jean, Amanda (EOIR)
Sent: Friday, September 28, 2018 12:43 PM
To: Davis, J.Thomas (EOIR) <Thomas.Davis@EOIR.USDOJ.GOV>; Mart, H. Kevin (EOIR) <H.Kevin.Mart@EOIR.USDOJ.GOV>
Subject: RE: Stakeholder Meeting

Tom,

Thanks for the info- very helpful! I will be in person but Judge Mart will participate either telephonically or VTC, depending on the room issue.

My apologies for not checking in with you earlier about the meeting space. Currently, we only have 6 rsvp's, would there be any rooms we could hold the meeting, such as a pro bono room or conference room?

Amanda

From: Davis, J.Thomas (EOIR)
Sent: Friday, September 28, 2018 12:41 PM
To: St Jean, Amanda (EOIR) <Amanda.StJean@EOIR.USDOJ.GOV>; Mart, H. Kevin (EOIR) <H.Kevin.Mart@EOIR.USDOJ.GOV>
Subject: RE: Stakeholder Meeting

Amanda/Judge Mart,
Greetings and TGIF. I will be able to attend....where and how will the meeting be conducted? VTC? In person? Telephonic? All of the courtrooms will be in use that morning. I have quickly looked at the questions. As for telephonic hearings which had been the practice all telephonic motions, as you have stated, are at the discretion of the case assigned IJ. I never guess how an IJ will rule on any type of motion. Let me think about that one a bit more since this matter is fairly new. Your answer on the second question was dead on. Juvenile master calendar cases will continue to be heard by Judge Holt on Tuesdays mornings in courtroom 1. On occasion we add a juvenile master on another day and we will do our best to get the word out. At this time no additional juvenile masters are scheduled through the end of the year.

Take care.

Tom

From: St Jean, Amanda (EOIR)
Sent: Friday, September 28, 2018 11:32 AM
To: Mart, H. Kevin (EOIR) <H.Kevin.Mart@EOIR.USDOJ.GOV>
Cc: Davis, J.Thomas (EOIR) <Thomas.Davis@EOIR.USDOJ.GOV>
Subject: Stakeholder Meeting

Hi Judge Mart and Tom,

In preparation for the stakeholder meeting next Thursday at 10 a.m., I wanted to provide you with the status and see if you have any comments or concerns.

Tom- Will you be able to attend?

UPDATES: Are there any updates or changes that you would like covered during the meeting?

AGENDA: Today is the last day for attendees to submit agenda item questions. The following questions were just submitted so far. I have drafted some responses but would like your input before I discuss with HQ.

1. **By now you've probably gotten a ton of questions about recent denials of motions for telephonic appearances. This change doesn't affect our agency's attorneys so much (we're based in Memphis), but it does affect the ability of our remote clients to appear from a nearby attorney's office. I expect y'all are already planning to address this issue – we'd just like to know what the current policy is, guidance/examples of what might constitute "exceptional circumstances" for a telephonic appearance, etc.**

(b) (5)



2. **Does the court plan to continue holding juvenile dockets on Tuesday mornings for the foreseeable future? (Occasionally the court sneaks in a juvenile docket on an off-day, but usually the schedule is pretty reliable from our standpoint as an LOPC provider).**

(b) (5)



Thanks,
Amanda

J. Thomas Davis
Court Administrator
USDOJ/EOIR/Immigration Court
80 Monroe Ave, Suite 501
Memphis, TN 38103

PRIVACY AND CONFIDENTIALITY STATEMENT: This e-mail message and any attachments are intended only for the use of the addressee named above and contain information that is privileged and confidential. If you are not the intended recipient, any dissemination, distribution, or copying is strictly unauthorized and prohibited. If you received this e-mail message in error, please immediately notify the sender by replying to this e-mail message or by telephone. Thank you.

Schaaf, Joseph R. (EOIR)

From: Mart, H. Kevin (EOIR)
Sent: Friday, November 02, 2018 4:29 PM
To: Schaaf, Joseph R. (EOIR)
Subject: RE: FOIA 2018-51756

There was no policy change on telephonic hearings. I met with the Memphis judges at the end of September to discuss a variety of matters primarily performance measures. I did discuss telephonic hearings but no policy was discussed. I informed the judges that as with any motion the decision on a motion is up to them but to also take into consideration their respective dockets and the merits of the motion before them and that they decide whether or not to grant a motion for a telephonic hearing. It's their call on granting or denying a motion. On October 4th we had a stakeholder meeting in Memphis organized by PIO Amanda St Jean. The topic of telephonic hearings was raised and I answered that all motions are decided by the individual judge and they will decide the motion based upon the arguments and evidence in the motion. I have had no complaints nor communications regarding telephonic hearings in Memphis.

Thanks,

Kevin

From: Schaaf, Joseph R. (EOIR)
Sent: Friday, November 02, 2018 12:59 PM
To: Mart, H. Kevin (EOIR) <H.Kevin.Mart@EOIR.USDOJ.GOV>
Cc: Lee-Sullivan, Marcia L. (EOIR) <Marcia.Lee-Sullivan@EOIR.USDOJ.GOV>
Subject: FW: FOIA 2018-51756

Judge Mart, can you tell me was there a policy change in telephonic appearances for your AOR a month or so ago? If so, I might be able to answer these without going through all these searches. V/r Joe

From: Schaaf, Joseph R. (EOIR)
Sent: Friday, November 02, 2018 12:52 PM
To: Davis, J.Thomas (EOIR) <Thomas.Davis@EOIR.USDOJ.GOV>; Johnson, Hunter (EOIR) <Hunter.Johnson@EOIR.USDOJ.GOV>
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(b) (5)

- For the past one hundred and eighty (180) days, records sent to and/or from the national headquarters of the Executive Office for Immigration Review (or the Office of the Chief Immigration Judge) to the Memphis and LaSalle Immigration Courts, including the court administrators, J. Thomas Davis and Hunter Johnson, and the IJs, Richard J. Averwater, Rebecca L. Holt, Vernon Benet Miles and Angela Munson, that include any or all of the following terms: "telephone"; "telephonic"; "video"; and/or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from IJ Richard J. Averwater that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";

- For the past one hundred and eighty (180) days, records sent to and or from IJ Rebecca L. Holt that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from IJ Vernon Benet Miles that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from J. Thomas Davis that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from IJ Angela Munson that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from IJ John A Duck, Jr. that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from IJ Agnelis L. Reese that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from IJ Hunter Johnson that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary"; and
- For the past one hundred and eighty (180) days, records sent from any of the above-named individuals containing the terms "telephone"; "telephonic"; "video"; and or "extraordinary" to representatives of the U.S. Department of Homeland Security's Immigration & Customs Enforcement Office of the Chief Counsel.

Call me at (b) (6) if any questions. V/r JRS

From: Schaaf, Joseph R. (EOIR)
Sent: Friday, November 02, 2018 12:41 PM
To: Davis, J.Thomas (EOIR) <Thomas.Davis@EOIR.USDOJ.GOV>
Cc: Lee-Sullivan, Marcia L. (EOIR) <Marcia.Lee-Sullivan@EOIR.USDOJ.GOV>
Subject: RE: 2018-51805

Tom, second request:

CLINIC hereby requests the following records:

- o For the past one hundred and eighty (180) days, records sent to and or from IJ Richard J. Averwater that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- o For the past one hundred and eighty (180) days, records sent to and or from IJ Rebecca L. Holt that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- o For the past one hundred and eighty (180) days, records sent to and or from IJ Vernon Benet Miles that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- o For the past one hundred and eighty (180) days, records sent to and or from J. Thomas Davis that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";

You only need to provide the ones that have to do with "what appears to be a new policy or practice in place at the Memphis Immigration Court (the "Court") whereby Immigration Judges ("IJ") deny requests to appear telephonically in the absence of "extraordinary circumstances"

V/r Joe

From: Schaaf, Joseph R. (EOIR)
Sent: Friday, November 02, 2018 12:31 PM
To: Davis, J.Thomas (EOIR) <Thomas.Davis@EOIR.USDOJ.GOV>
Cc: Lee-Sullivan, Marcia L. (EOIR) <Marcia.Lee-Sullivan@EOIR.USDOJ.GOV>
Subject: FW: 2018-51735 (Emails)

Tom, going VFR direct to you. There are three inquiries regarding telephonic policies at Memphis. Please see below. Please ask Judges Holt, Miles and Munson if they have any responsive records. More to follow.

V/r
Joseph R. Schaaf
Chief Counsel, Administrative Law
Executive Office for Immigration Review
(b) (6) [REDACTED]

From: Schaaf, Joseph R. (EOIR)
Sent: Tuesday, October 02, 2018 4:32 PM
To: Lee-Sullivan, Marcia L. (EOIR) <Marcia.Lee-Sullivan@EOIR.USDOJ.GOV>
Subject: FW: 2018-51735 (Emails)

Marcia, this and two related requests have something to do with Memphis changing its telephonic policies. Im not sure if it was a local decision or OCIJ. Please check OCIJ-wide and also directly with Memphis. V/r JRS

From: Phung, Mai (EOIR)
Sent: Tuesday, September 25, 2018 3:55 PM
To: Schaaf, Joseph R. (EOIR) <Joseph.Schaaf@EOIR.USDOJ.GOV>
Cc: Souza, Crystal (EOIR) <Crystal.Souza@EOIR.USDOJ.GOV>
Subject: 2018-51735 (Emails)

From: 61707-85443197@requests.muckrock.com <61707-85443197@requests.muckrock.com>
Sent: Tuesday, September 25, 2018 9:12 AM
To: FOIARequests, EOIR (EOIR) <EOIR.FOIARequests@EOIR.USDOJ.GOV>
Subject: Freedom of Information Act Request: Guidance on Telephonic Hearings

Department of Justice, Executive Office for Immigration Review
FOIA Office
Suite 1903
5107 Leesburg Pike
Falls Church, VA 20530

September 25, 2018

To Whom It May Concern:

Pursuant to the Freedom of Information Act, I hereby request the following records:

The records from January 1, 2018 to the date this request is processed reflecting the agency's guidance to IJs about whether and when to permit an attorney to appear via telephone.

The search should include any e-mail messages sent to any of the following: (1)

All_of_Judges@EOIR.USDOJ.GOV; (2) the EOIR e-mail address for Immigration Judge Rebecca Holt, the EOIR e-mail address for Immigration Judge Vernon Miles; or the EOIR e-mail address for Immigration Judge Angela Munson. This should include messages where any of these four recipients is listed in the "to," "cc," or "bcc" fields.

The keywords to search for are "telephonic" or "by telephone"

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Matthew Hoppock

Filed via MuckRock.com

E-mail (Preferred): 61707-85443197@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/department-justice-executive-office-immigration-review-4122/guidance-on-telephonic-hearings-61707?email=EOIR.FOIARequests%40usdoj.gov&uuid-login=e25faeb8-3474-4251-8723-1e8c78bfcc68#agency-reply

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News
DEPT MR 61707
411A Highland Ave
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

From: [REDACTED]
To: [REDACTED]
Subject: FW: Telephonic Hearings
Date: Tuesday, November 27, 2018 3:25:22 PM

From: Mart, H. Kevin (EOIR)
Sent: Tuesday, September 25, 2018 2:31 PM
To: Davis, J.Thomas (EOIR) <Thomas.Davis@EOIR.USDOJ.GOV>
Subject: RE: Telephonic Hearings

whether a judge allows a telephonic hearing is left to the judge's discretion. The firms say that all of them conduct telephonic hearings. There is no mandatory language. Also the CA offices not yet involved with that has no instructions. Each motion is decided upon by the U judge in that case.

From: Davis, J.Thomas (EOIR)
Sent: Tuesday, September 25, 2018 2:51 PM
To: Mart, H. Kevin (EOIR) <[REDACTED]>
Subject: Telephonic Hearings

Judge Mart,
Good afternoon. Below is an e-mail shared with me by (b) (6) [REDACTED], local AILA liaison. This type of reaction was expected, but just making you aware of the matter. As we all discussed most Immigration Courts do not conduct telephonic hearings. The firms will simply have to make a business decision.

Take care.

Tom

Dear (b) (6)

I hope this email finds you well. I am reaching out to you, as the AILA EOIR Liaison, regarding Judge Holt's and Judge Miles' recent change in policy regarding telephonic appearance for master calendar hearings. It seems that these judges are now routinely denying motions for these hearings. As of this morning, I received orders from both judges denying our firm's motion for telephonic appearance because there are no "extraordinary circumstances" present.

Our attorneys, (b) (6) [REDACTED] and I, all live and practice in Little Rock, Arkansas. The trip to Memphis takes us anywhere from 2 ½ - 3 hours **each way** on average, and can take even longer if there are accidents, construction, or bad weather. That means that we lose almost an entire day of work to travel each time we have to travel to Memphis. We generally have master calendar hearings before the Memphis Immigration Court 2-4 days/week. It's simply not feasible for a firm of our size to lose an attorney that many days/week for such short (3-5 minute), routine hearings. If our attorneys can't appear telephonically at master calendar hearings, the reality is that we will not be able to represent respondents before these judges. Our clients are already on payment plans and can't afford for us to increase our fees to cover additional travel time or to pay a

local Memphis attorney to cover a master calendar hearing. Our firm isn't comfortable or willing to take on the increased liability of having one of our attorneys driving to and from Memphis on an almost daily basis, or the increased liability of having a local Memphis attorney who isn't familiar with a case cover a master calendar hearing. These circumstances have existed as long as we have practiced before the Memphis Immigration Court, and our motions for telephonic appearances have always been granted. Although at first blush the judges may not consider our distance from/travel time to the Court an "extraordinary circumstance," it is sufficiently extraordinary as to significantly impede our ability to take cases before the Memphis Immigration Court.

I know that other members of the private bar are in the same/similar situation, and I think the result will be that fewer attorneys will represent respondents before the Memphis Immigration Court, which will in turn result in more pro se respondents before the Court. Without any explanation from the judges as to why they've started denying telephonic appearances, I can only assume that the underlying rationale is that telephonic hearings are taking too long because judges have to get the attorneys on the phone. I can only speak for our firm when I say that we are always at our desk waiting and ready for the judge's call. (In all my years practicing before the Court, I can recall only one time that Judge Holt called me and I was in the restroom) From what I've seen in the Court and heard from other attorneys and judges, hearings with pro se respondents generally take longer than hearings in which the respondents are represented by counsel. So, if the judges are trying to be efficient with their time in order to complete their master calendar dockets, an increase in pro se respondents will likely have the opposite effect.

I hope that you are able to discuss this matter with Tom Davis so that there can hopefully be a quick resolution to the matter. In the meantime, our office is making the necessary arrangements for pending cases and taking this new policy into consideration when accepting new cases. I hope to hear from you soon.

Thanks,

(b) [REDACTED]

J. Thomas Davis
Court Administrator
USDOJ/EOIR/Immigration Court
80 Monroe Ave. Suite 501
Memphis, TN 38103

From: [Schaaf, Joseph R. \(EOIR\)](#)
To: ["61720-05451195@requests.muckrock.com"](mailto:61720-05451195@requests.muckrock.com)
Cc: [FOIARequests, EOIR \(EOIR\)](#)
Subject: 2018-51805
Date: Friday, November 30, 2018 5:40:00 PM
Attachments: [1130201851805.pdf](#)

Mr. Edelman, please see FOIA response attached.

Wr/
Joseph R. Schaaf
Chief Counsel, Administrative Law
Executive Office for Immigration Review



U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

5107 Leesburg Pike, Suite 1903
Falls Church, Virginia 22041

November 30, 2018

MuckRock News
DEPT MR 61720
411A Highland Ave
Somerville, MA 02144-2516

Re: FOIA 2018-51805

Dear Mr. Edelman,

This letter is in response to your Freedom of Information Act (FOIA) request to the Executive Office for Immigration Review (EOIR) in which you seek documents regarding agency guidance to immigration judges about whether and when to permit an attorney to appear via telephone.

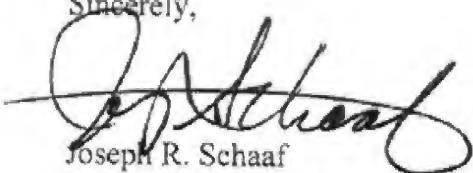
The agency guidance is found in the Immigration Practice Manual at sections 4.6 and 4.7 (enclosed). Additionally, upon search we discovered an e-mail string containing guidance from Assistant Chief Immigration Judge Mart to the Memphis Immigration Court. Portions of the e-mail string were redacted pursuant to 5 USC § 552(b)(6) to prevent an unwarranted invasion of personal privacy. There will be no charge for these documents.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. *See* <http://www.justice.gov/oip/foiastart/2012foiastart9.html>.

You may contact our FOIA Public Liaison at the telephone number 703-605-1297 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,



Joseph R. Schaaf
Chief Counsel for Administrative Law

(d) Withdrawal or substitution. — Withdrawal of counsel can be requested by oral or written motion. See Chapter 2.3(i)(ii) (Withdrawal of counsel). Substitution of counsel also can be requested by oral or written motion. See Chapter 2.3(i)(i)(Substitution of counsel).

4.5 Hearing and Filing Location

There are more than 200 Immigration Judges in over 50 Immigration Courts nationwide. The hearing location is identified on the Notice to Appear (Form I-862) or hearing notice. See Chapter 4.15(c) (Notification). Parties should note that documents are not necessarily filed at the location where the hearing is held. For information on hearing and filing locations, see Chapter 3.1(a) (Filing). If in doubt as to where to file documents, parties should contact the Immigration Court.

4.6 Form of the Proceedings

An Immigration Judge may conduct removal hearings:

- in person
- by video conference
- by telephone conference, except that evidentiary hearings on the merits may only be held by telephone if the respondent consents after being notified of the right to proceed in person or by video conference

See INA § 240(b)(2), 8 C.F.R. § 1003.25(c). See also Chapter 4.7 (Hearings by Video or Telephone Conference).

Upon the request of the respondent or the respondent's representative, the Immigration Judge has the authority to waive the appearance of the respondent and/or the respondent's representative at specific hearings in removal proceedings. See 8 C.F.R. § 1003.25(a). See also Chapter 4.15(m) (Waivers of appearances).

4.7 Hearings by Video or Telephone Conference

(a) In general. — Immigration Judges are authorized by statute to hold hearings by video conference and telephone conference, except that evidentiary hearings on the

merits may only be conducted by telephone conference if the respondent consents after being notified of the right to proceed in person or through video conference. See INA § 240(b)(2), 8 C.F.R. § 1003.25(c). See also Chapter 4.6 (Form of the Proceedings).

(b) Location of parties. — Where hearings are conducted by video or telephone conference, the Immigration Judge, the respondent, the DHS attorney, and the witnesses need not necessarily be present together in the same location.

(c) Procedure. — Hearings held by video or telephone conference are conducted under the same rules as hearings held in person.

(d) Filing. — For hearings conducted by video or telephone conference, documents are filed at the Immigration Court having administrative control over the Record of Proceedings. See Chapter 3.1(a) (Filing). The locations from which the parties participate may be different from the location of the Immigration Court where the documents are filed. If in doubt as to where to file documents, parties should contact the Immigration Court.

In hearings held by video or telephone conference, Immigration Judges often allow documents to be faxed between the parties and the Immigration Judge. Accordingly, all documents should be single-sided. Parties should not attach staples to documents that may need to be faxed during the hearing.

(e) More information. — Parties should contact the Immigration Court with any questions concerning an upcoming hearing by video or telephone conference.

4.8 Attendance

Immigration Court hearings proceed promptly on the date and time that the hearing is scheduled. Any delay in the respondent's appearance at a master calendar or individual calendar hearing may result in the hearing being held "in absentia" (in the respondent's absence). See 8 C.F.R. § 1003.26. See also Chapters 4.15 (Master Calendar Hearing), 4.16 (Individual Calendar Hearing), 4.17 (In Absentia Hearing).

Any delay in the appearance of either party's representative without satisfactory notice and explanation to the Immigration Court may, in the discretion of the Immigration Judge, result in the hearing being held in the representative's absence.

Respondents, representatives, and witnesses should be mindful that they may encounter delays in going through the mandatory security screening at the Immigration

From: Davis, J.Thomas (EOIR)
To: Schaaf, Joseph R. (EOIR)
Subject: FW: Telephonic Hearings
Date: Tuesday, November 27, 2018 3:25:22 PM

From: Mart, H. Kevin (EOIR)
Sent: Tuesday, September 25, 2018 2:31 PM
To: Davis, J.Thomas (EOIR) <Thomas.Davis@EOIR.USDOJ.GOV>
Subject: RE: Telephonic Hearings

Whether a judge allows a telephonic hearing is left to the judge's discretion. The regs say that an IJ may conduct telephonic hearings. There is no mandatory language. Also the CA does not get involved with an IJ's rulings on motions. Each motion is decided upon by the IJ handling that case.

From: Davis, J.Thomas (EOIR)
Sent: Tuesday, September 25, 2018 2:51 PM
To: Mart, H. Kevin (EOIR) <H.Kevin.Mart@EOIR.USDOJ.GOV>
Subject: Telephonic Hearings

Judge Mart,
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Take care.

Tom

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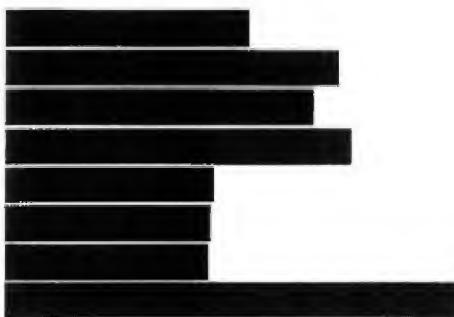
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Thanks,

(b)



J. Thomas Davis
Court Administrator
USDOJ/EOIR/Immigration Court
80 Monroe Ave, Suite 501
Memphis, TN 38103

From: [Schaaf, Joseph R. \(FOIR\)](#)
To: ["61707-85443197@requests.muckrock.com"](mailto:61707-85443197@requests.muckrock.com)
Cc: [FOIARequests, FOIR \(FOIR\)](#); [Admin DocuFreedom](#)
Subject: FOIA 2018-51735
Date: Friday, November 30, 2018 5:47:00 PM
Attachments: [113020182018.pdf](#)

Please see FOIA response attached.

Wr/
Joseph R. Schaaf
Chief Counsel, Administrative Law
Executive Office for Immigration Review



U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

5107 Leesburg Pike, Suite 1903
Falls Church, Virginia 22041

November 30, 2018

MuckRock News
DEPT MR 61707
411A Highland Ave
Somerville, MA 02144-2516

Re: FOIA 2018-51735

Dear Mr. Hoppock,

This letter is in response to your Freedom of Information Act (FOIA) request to the Executive Office for Immigration Review (EOIR) in which you seek documents regarding agency guidance to immigration judges about whether and when to permit an attorney to appear via telephone.

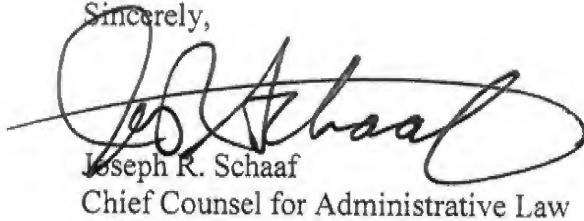
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Sincerely,

A handwritten signature in black ink, appearing to read "Joseph R. Schaaf". The signature is fluid and cursive, with a large, stylized "J" at the beginning.

Joseph R. Schaaf

Chief Counsel for Administrative Law

(d) Withdrawal or substitution. — Withdrawal of counsel can be requested by oral or written motion. See Chapter 2.3(i)(ii) (Withdrawal of counsel). Substitution of counsel also can be requested by oral or written motion. See Chapter 2.3(i)(i)(Substitution of counsel).

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See INA § 240(b)(2), 8 C.F.R. § 1003.25(c). See also Chapter 4.7 (Hearings by Video or Telephone Conference).

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From: Davis, J.Thomas (EOIR)
To: Schaaf, Joseph R. (EOIR)
Subject: FW: Telephonic Hearings
Date: Tuesday, November 27, 2018 3:25:22 PM

From: Mart, H. Kevin (EOIR)
Sent: Tuesday, September 25, 2018 2:31 PM
To: Davis, J.Thomas (EOIR) <Thomas.Davis@EOIR.USDOJ.GOV>
Subject: RE: Telephonic Hearings

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Judge Mart,

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Take care.

Tom

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Our attorneys, (b) (6) [REDACTED] and I, all live and practice in Little Rock, Arkansas. The trip to Memphis takes us anywhere from 2 ½ - 3 hours **each way** on average, and can take even longer if there are accidents, construction, or bad weather. That means that we lose almost an entire day of work to travel each time we have to travel to Memphis. We generally have master calendar hearings before the Memphis Immigration Court 2-4 days/week. It's simply not feasible for a firm of our size to lose an attorney that many days/week for such short (3-5 minute), routine hearings. If our attorneys can't appear telephonically at master calendar hearings, the reality is that we will not be able to represent respondents before these judges. Our clients are already on payment plans and can't afford for us to increase our fees to cover additional travel time or to pay a

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I know that other members of the private bar are in the same/similar situation, and I think the result will be that fewer attorneys will represent respondents before the Memphis Immigration Court, which will in turn result in more pro se respondents before the Court. Without any explanation from the judges as to why they've started denying telephonic appearances, I can only assume that the underlying rationale is that telephonic hearings are taking too long because judges have to get the attorneys on the phone. I can only speak for our firm when I say that we are always at our desk waiting and ready for the judge's call. (In all my years practicing before the Court, I can recall only one time that Judge Holt called me and I was in the restroom) From what I've seen in the Court and heard from other attorneys and judges, hearings with pro se respondents generally take longer than hearings in which the respondents are represented by counsel. So, if the judges are trying to be efficient with their time in order to complete their master calendar dockets, an increase in pro se respondents will likely have the opposite effect.

I hope that you are able to discuss this matter with Tom Davis so that there can hopefully be a quick resolution to the matter. In the meantime, our office is making the necessary arrangements for pending cases and taking this new policy into consideration when accepting new cases. I hope to hear from you soon.

Thanks,

(b) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

J. Thomas Davis
Court Administrator
USDOJ/EOIR/Immigration Court
80 Monroe Ave. Suite 501
Memphis, TN 38103

From: [Schaaf, Joseph R. \(FOIR\)](#)
To: (b) (6)
Cc: [FOIARequests_FOIR \(FOIR\)](#)
Subject: FOIA 2019-51756
Date: Friday, November 30, 2018 6:03:00 PM
Attachments: [1130201851756.pdf](#)

Please see FOIA response attached.

Wr/
Joseph R. Schaaf
Chief Counsel, Administrative Law
Executive Office for Immigration Review



U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

5107 Leesburg Pike, Suite 1903
Falls Church, Virginia 22041

November 30, 2018

Nathan R. Bogart

(b) (6)

Re: FOIA 2018-51756

Dear Atty. Bogart,

This letter is in response to your Freedom of Information Act (FOIA) request to the Executive Office for Immigration Review (EOIR) in which you seek documents regarding agency guidance to immigration judges about whether and when to permit an attorney to appear via telephone.

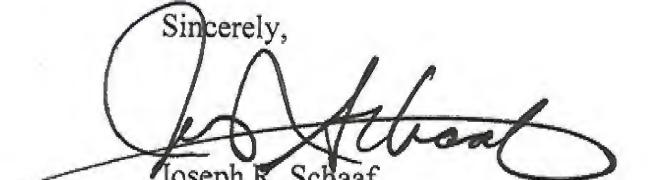
The agency guidance is found in the Immigration Practice Manual at sections 4.6 and 4.7 (enclosed). Additionally, upon search we discovered an e-mail string containing guidance from Assistant Chief Immigration Judge Mart to the Memphis Immigration Court. Portions of the e-mail string were redacted pursuant to 5 USC § 552(b)(6) to prevent an unwarranted invasion of personal privacy. There will be no charge for these documents.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. *See* <http://www.justice.gov/oip/foiapost/2012foiapost9.html>.

You may contact our FOIA Public Liaison at the telephone number 703-605-1297 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,



Joseph R. Schaaaf

Chief Counsel for Administrative Law

(d) Withdrawal or substitution. — Withdrawal of counsel can be requested by oral or written motion. See Chapter 2.3(i)(ii) (Withdrawal of counsel). Substitution of counsel also can be requested by oral or written motion. See Chapter 2.3(i)(i)(Substitution of counsel).

4.5 Hearing and Filing Location

There are more than 200 Immigration Judges in over 50 Immigration Courts nationwide. The hearing location is identified on the Notice to Appear (Form I-862) or hearing notice. See Chapter 4.15(c) (Notification). Parties should note that documents are not necessarily filed at the location where the hearing is held. For information on hearing and filing locations, see Chapter 3.1(a) (Filing). If in doubt as to where to file documents, parties should contact the Immigration Court.

4.6 Form of the Proceedings

An Immigration Judge may conduct removal hearings:

- in person
- by video conference
- by telephone conference, except that evidentiary hearings on the merits may only be held by telephone if the respondent consents after being notified of the right to proceed in person or by video conference

See INA § 240(b)(2), 8 C.F.R. § 1003.25(c). See also Chapter 4.7 (Hearings by Video or Telephone Conference).

Upon the request of the respondent or the respondent's representative, the Immigration Judge has the authority to waive the appearance of the respondent and/or the respondent's representative at specific hearings in removal proceedings. See 8 C.F.R. § 1003.25(a). See also Chapter 4.15(m) (Waivers of appearances).

4.7 Hearings by Video or Telephone Conference

(a) In general. — Immigration Judges are authorized by statute to hold hearings by video conference and telephone conference, except that evidentiary hearings on the

merits may only be conducted by telephone conference if the respondent consents after being notified of the right to proceed in person or through video conference. See INA § 240(b)(2), 8 C.F.R. § 1003.25(c). See also Chapter 4.6 (Form of the Proceedings).

(b) Location of parties. — Where hearings are conducted by video or telephone conference, the Immigration Judge, the respondent, the DHS attorney, and the witnesses need not necessarily be present together in the same location.

(c) Procedure. — Hearings held by video or telephone conference are conducted under the same rules as hearings held in person.

(d) Filing. — For hearings conducted by video or telephone conference, documents are filed at the Immigration Court having administrative control over the Record of Proceedings. See Chapter 3.1(a) (Filing). The locations from which the parties participate may be different from the location of the Immigration Court where the documents are filed. If in doubt as to where to file documents, parties should contact the Immigration Court.

In hearings held by video or telephone conference, Immigration Judges often allow documents to be faxed between the parties and the Immigration Judge. Accordingly, all documents should be single-sided. Parties should not attach staples to documents that may need to be faxed during the hearing.

(e) More information. — Parties should contact the Immigration Court with any questions concerning an upcoming hearing by video or telephone conference.

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